

January 2019

## Better by Design: Implementing Meaningful Change for the Next Generation of Law Students

Rebecca Flanagan

Follow this and additional works at: <https://digitalcommons.mainerlaw.maine.edu/mlr>



Part of the [Legal Education Commons](#), and the [Legal Profession Commons](#)

---

### Recommended Citation

Rebecca Flanagan, *Better by Design: Implementing Meaningful Change for the Next Generation of Law Students*, 71 Me. L. Rev. 103 (2019).

Available at: <https://digitalcommons.mainerlaw.maine.edu/mlr/vol71/iss1/5>

This Article is brought to you for free and open access by the Journals at University of Maine School of Law Digital Commons. It has been accepted for inclusion in Maine Law Review by an authorized editor of University of Maine School of Law Digital Commons. For more information, please contact [mdecrow@maine.edu](mailto:mdecrow@maine.edu).

# BETTER BY DESIGN: IMPLEMENTING MEANINGFUL CHANGE FOR THE NEXT GENERATION OF LAW STUDENTS

*Rebecca Flanagan*

## ABSTRACT

### I. INTRODUCTION

### II. A DAY IN THE LIFE OF A BETTER LAW SCHOOL

### III. WHY WE NEED TO IMAGINE UTOPIA: PROBLEMS WITH THE CURRENT MODEL OF LEGAL EDUCATION

### IV. ROADMAP: GUIDING PRINCIPLES FOR THE FUTURE OF LEGAL EDUCATION

*A. Breaking Down the Process: The Spiral Curriculum Applied to Legal Learning*

*B. Experiential and Service Learning Across the Curriculum: Providing Context and Meaning to Legal Education*

*C. Reinvigorating Upper Division Legal Education: Integration, Specialization, and Professional Readiness*

### V. CONCLUSION

## BETTER BY DESIGN: IMPLEMENTING MEANINGFUL CHANGE FOR THE NEXT GENERATION OF LAW STUDENTS

*Rebecca Flanagan\**

### ABSTRACT

This article presents a fictitious, utopian law school to challenge the assumption that legal education has met adequately the challenges of preparing law students for an evolving profession. By presenting the utopian ideal, the author highlights how adoption of best practices in learning and cognitive sciences could transform legal education from a highly criticized institution to a dynamic, self-transforming academy designed to meet the changing needs of students and the practicing bar.

### I. INTRODUCTION

Come with me on a journey of imagination.<sup>1</sup> Our destination is a law school outside of time and space; a law school with no history, no institutional memory, and no governing bodies demanding adherence to mandates and rules based on past practice. Here, there are no financial constraints; all costs are covered by dues from the practicing bar, and costs are shared equally across all institutions. There is no tuition or fee due by students. The students are removed from the constraints imposed by credentialing tests. Although our institution is a part of a larger university, the parent university provides a space for interdisciplinary and cross-disciplinary collaboration. The university provides support to teaching professionals and students without direct costs and administrative sharing with the law school. The university views law school as a public good, designed to advance justice, fairness, and greater understanding of law and society.

Our destination is guided by the principal that the educational experience should maximize student learning and professional development. The school uses design thinking to guide institutional and curricular choices, with a focus on alignment of methods, doctrine, and goals of students entering an evolving profession. Teaching methods are based on best practices in learning sciences; all teachers are focused on student development as learners and future professionals. Law school is not just an intellectual exercise for students and professors, but a place for the growth and development of students as learned professionals who will need to be guided by maturity and ethics as well as intellectual and analytical prowess.

---

\* Assistant Professor and Director of Teaching and Learning Methods, University of Massachusetts Law School, Dartmouth. The author would like to thank Kris Franklin and Jennifer Carr for their generous support while writing and editing this article. Special thanks go to Professor and Dean Emeritus Judith Wegner and Professor Emeritus RuthAnn McKinney of University of North Carolina School of Law for their continued support and guidance. This article would not be possible without the help of my research assistant, Alicia Blanchard.

1. Thank you to Rod Serling and the Twilight Zone.

Many will view this utopia as a pipe dream, an academic's fantasy unmoored from practical application, and yet there is value in designing a castle in the sky, value in thinking through the steps necessary to create the optimal learning environment for law students. By implementing developments in learning and education discovered over the last thirty years, we can produce law students who understand and retain more knowledge, and who also enjoy the process of legal education. The benefits in the classroom should persuade faculty and administration of the value of redesigning legal education. Classroom professors benefit when students are engaged and eager to learn on a deeper level, ready to tackle the nuances and ambiguities that spur research and publication. Administrators benefit when students are better prepared for the bar and practice. Legal education as a whole benefits when doctrinal and experiential learning is skillfully integrated across the curriculum and students understand the context and humanity that propels policy. By working through the fantasy, we can envision the radical change necessary to optimally support students as they become learned professionals. Releasing ourselves from constraints allows us to see possibilities for growth and progress.

Despite recent gains in applicants,<sup>2</sup> law schools are still battling the "perfect storm"<sup>3</sup> of reduced demand, increased mandates, and decreased revenue. It is not too late to reimagine a curriculum designed for optimal learning and student development; however, the time to act is limited. As institutions normalize lower enrollment targets and adjust to the stability of the "new normal,"<sup>4</sup> there will be a decreased will to prevent the next crisis in legal education. Implementing a curriculum that is continually responsive to student and professional change is necessary to prevent the further erosion of respect for the profession, and to keep law schools within the professional pantheon.

## II. A DAY IN THE LIFE OF A BETTER LAW SCHOOL

The first stop on our trip is to a first-year Property class. As we enter the room, we see roughly twenty students sitting in a circle, engrossed in problems involving residential leases. After working on their own, students begin working in pairs, and after another few minutes, working in groups of five. While we watch them work, the professor is moving between groups, offering suggestions and encouragement to the small groups. At the end of class, students receive a brief assignment for the following class, requiring them to read one case and several pages of state statutes

---

2. LAW SCHOOL ADMISSIONS COUNCIL, REPORT FROM LSAC (Dec. 2017), [https://www.lsac.org/sites/default/files/legacy/docs/default-source/publications-\(lsac-resources\)/lsac-report-dec2017.pdf](https://www.lsac.org/sites/default/files/legacy/docs/default-source/publications-(lsac-resources)/lsac-report-dec2017.pdf) [https://perma.cc/4AXT-NYYM].

3. See Cara Cunningham Warren, *Achieving the American Bar Association's Pedagogy Mandate: Empowerment in the Midst of A "Perfect Storm,"* 14 CONN. PUB. INT. L.J. 67 (2014).

4. See generally *Required Disclosures*, AM. BAR ASSOC. SECTION ON LEGAL EDUC. AND ADMISSION TO THE BAR (2016), <http://abarequireddisclosures.org> [https://perma.cc/4QT7-Q29Z] (for statistics related to the decline in law school enrollment since 2011); see also Amanda Griffin, *Law School Enrollment Increases by 36*, JD J. (Dec. 16, 2016), <http://www.jdjournal.com/2016/12/16/law-school-enrollment-increases-by-36/> [https://perma.cc/74HW-RJ5R] (Prof. Derek Muller explaining "flat will be the new norm" of law school enrollment).

regulating residential leases. They are also asked to turn in their reflective essay on their client experiences in the landlord-tenant clinic.

We ask our guide about the reflective essay assignment: isn't it too early to have students working with clients? And what about their other assignments? How do they fit them into their schedule? Our guide explains each question in turn, starting with the live-client experiences. Students begin live-client experiences at the beginning of their first year. Each small cluster of students is matched to a clinic, a government office, or a small public service firm. The class we just visited spends their afternoons in clinical rounds in a small claims clinic. In their clinic, they primarily see landlord-tenant disputes and clients fighting contracts of adhesion. First-year students help with basic tasks, such as greeting clients and completing intake forms. Students are closely supervised by upper-level students as well as office managers. Those early first-year experiences are designed to acclimate students to law office management and client contact; early first-year students are not asked to handle legal work. However, our guide explains, most students truly value their work with clients and the collaborative nature of these early experiences. Students are able to connect these experiences with clients to what they read about in their casebook. Their in-class problems allow them to practice how to solve client problems and connect them to the humanity within their assignments. Law students are more engaged and enthusiastic in the classroom when they understand the context of their reading and see the real-world impact of practicing law.

As students move from Property to Contracts, we notice that the classroom looks very different. Each group is drafting a contract; they have several models spread out on their table, along with a contract-drafting manual. Students sit in groups of four, typing on keyboards, in front of an interactive touchscreen monitor. As they type, their writing and peer edits show up on the monitor at their table. The front of the classroom features a large, movie-screen-type monitor. The professor has the power to scroll between touchscreens on the large monitor, commenting on the work of each group, and asking the class to make suggestions.

I wonder about what the students are missing, since their afternoons are spent in service learning instead of classrooms; how are they learning legal writing? Our guide begins by explaining that legal writing instruction is embedded into all courses. Instead of isolating legal writing instruction, an embedded legal writing professor co-teaches with the professors in each cluster. Students receive authentic assignments keyed to their classroom learning, using facts from the clients they see in rounds. By embedding legal writing in all courses, students see how skills demonstrate understanding of doctrinal material. By keying the assignments to what students are experiencing in their live-client service learning, students live the maxim "clear writing is clear thinking."<sup>5</sup> Students must incorporate client experiences into their writing, clarifying their understanding of the client's problems. Formative assessment is less of a burden for both professors because they each have

---

5. See NAT'L ENDOWMENT FOR THE HUMAN., *The Title Always Comes Last*, (July/Aug. 2002), <https://www.neh.gov/about/awards/jefferson-lecture/david-mccullough-biography> [<https://perma.cc/P2A7-3YML>] (interview by Bruce Cole with David McCullough) ("Writing is the thing. To write well is to think clearly. That's why it's so hard.").

responsibility for student work product; students are continually assessed on both their substantive understanding of legal doctrine and the mechanics of legal form. Professors value the small clusters because they are grading work from only twenty students at one time, with the co-professor providing additional substantive comments on all work.

Our guide's response brings up an earlier question: how do students find the time to adequately prepare for class if they are spending so much time in real client experiences? She assures us students are always well-prepared for class, because their out-of-class work is limited and focused on problems they will see in their live-client experiences. Students are highly motivated to prepare when the problems they discuss in class are closely related to the issues facing the clients they see each afternoon. The first-year curricular focus is on in-depth learning of fundamental concepts; in their second year, students revisit more complex doctrine within the traditional first-year subjects. This system ensures breadth of coverage over the long-term, without overwhelming students. Their out-of-class preparation is limited to the problems they are facing in class and in their live-client experiences, and the focus is on mastery, not broad coverage.

After our visit to the first-year clusters, our guide lets us sit in the student lounge to discuss the details of the legal program. As we saw in the Property and Contracts classes, the first-year students are in clusters of eighteen to twenty-two students, and there are roughly six clusters per cohort. Each cluster takes two doctrinal courses between eight a.m. and noon, with short breaks between classes. With each class running for almost two hours a day, five day per week, students stay in each cluster, with the same classmates, for three months, before rotating to a new doctrinal-service-learning cluster. The intensive nature of the cluster system fosters in-depth study; coverage is limited so students can gain deeper understanding of fundamental concepts in each doctrinal area.<sup>6</sup> Because the small cluster system operates for the entirety of the first two years, students revisit each subject area repeatedly. This spiral system, where students focus on mastery of fundamental concepts matched to experiential learning, focuses on depth and demonstration of knowledge.

The upper-division clusters remain small, with twenty students per group. Each cluster explores issues in considerably more depth. Instead of contemplating the basics of case structure, upper-division students focus on more complex doctrinal problems. While Property is paired with Contracts in the first-year, Property is paired with Constitutional Law in the second-year clusters, and students focus on free speech and restrictive covenants, substantive due process and equal protection alongside zoning. The second-year clusters are designed to break down the artificial

---

6. See Jennifer King Rice et al., *The Effect of Block Scheduling High School Mathematics Courses on Student Achievement and Teachers' Use of Time: Implications for Educational Productivity*, 21 ECON. OF EDUC. REV. 599, 599-600 (2002); see also Sally J. Zepeda & R. Stewart Mayers, *An Analysis of Research on Block Scheduling*, 76 REV. ED. RES. 137, 137-38 (2006) (The cluster scheduling referred to in this article is similar to block scheduling common in secondary schools. Cluster scheduling differs from block scheduling because block scheduling does not allow for revisiting subjects in increasing complexity. While some research on block scheduling has suggested it may lower standardized test scores, cluster scheduling would allow for revisiting subjects, and spaced studying over time, which should enhance learning.).

barriers between doctrinal topics, while providing students with greater breadth of knowledge in the doctrinal areas and more advanced understanding of complex problems. Additionally, courses focused on procedure and legal theory are incorporated into the second and third years of law school. The nature of courses focused on procedure and theory limits their pairing with early experiential learning. Great care was taken to embed theoretical courses at the proper time in the development of students' legal framework and analytical thinking. By moving these courses into the second and third years of law school, students begin these courses with context and understanding of the structure of the legal system which greatly enhances their understanding, and the applicability of procedure and theory on law.

This explanation leads me to ask our guide about the last year of law school: was the third year just an extension of this model of small classes with modified experiential learning, increasing complexity and breadth of coverage in core subjects, along with courses in theory and procedure? She explains that the last year of legal education is about transitions; students should transition from their role as novice and learner to developing professional and emerging practitioner. The curriculum is designed to assist this transition. As students move through their first two years of the program, they meet with their professors to develop personal goals. These goals are the product of the reflection that is encouraged throughout the experiential curriculum. Students examine their strengths and their weaknesses, their passions and their expertise, as well as more prosaic concerns such as where they would like to live and their ideal work environment. The reflection process culminates in a final year plan. This process prevents students from defaulting to popular career plans or succumbing to peer pressure to join "big law." Reflection requires students to examine their strengths, as well as their personal values. By asking students to probe the hard questions throughout their law school career, they are less likely to choose paths that lead to career burnout, because they are choosing a path true to their values. The final year plan lays out where students would like to start their careers and designates where they want to focus their learning. Students spend most of their time in their final year in experiential programs focused on areas of specialization. Students can choose experiential programs focused on such areas as general civil litigation practice, large-firm urban litigation, international private law, transactional practice, or criminal practice. These experiential programs are flexible and designed to reflect employment opportunities as well as areas of strength within the law school. As new areas of law develop and expand, the law school seeks opportunities for their students to get specialized expertise in those new and developing areas before graduation. Additionally, students can choose to leave the law school and spend their final year at another law school that offers different specialized programs, much like medical students choosing residencies. In addition to the experiential learning, students take two to three seminars each semester. Each seminar is an in-depth examination of an area of law within the student's specialization.

I ask our guide about summers; in law school as I currently know it, students fight for paid employment over the summer. The guide laughs and hesitates—law school runs year-round. The summers are time for more intense legal training with

additional credit-bearing seminars on legal ethics and professional responsibilities. Legal ethics are best taught while students are spending the bulk of their time working with clients on legal problems, while overseen by practicing attorneys. These courses become more salient to students while they are working full-time with clients. While working full-time, they experience the emotions, professional pressure, and external demands on time that critically shape responses to ethical dilemmas. The hope is that situating students in the actual demands of practice will give them a more nuanced, practical understanding of the challenges they will face as practicing attorneys.

My day is almost over, and I am fascinated by the educational program at the law school. It feels as if the law school is built on the best advances in learning sciences instead of traditional practices. The students do not have the overworked, overstressed look I am accustomed to seeing on law students. They look energized by the process of learning how to become a lawyer. As an observer, it is gratifying to see law students engaged and excited about the practice of law. As I leave the building, I take one last look around, and prepare to take all that I have learned back to my law school.

### III. WHY WE NEED TO IMAGINE UTOPIA: PROBLEMS WITH THE CURRENT MODEL OF LEGAL EDUCATION

This exercise in imagination refocuses us on the goals of legal education as an institution and for the individual student. For so long, the truism that law school taught students to “think like a lawyer”<sup>7</sup> summed up the goals of legal education. It was something of a tautology; the goal of law school was to teach students to “think like a lawyer” and “thinking like a lawyer” was what was done in law schools.<sup>8</sup> Historically, the case method, which is the foundation of the phrase “thinking like a lawyer,” has focused on “the adversarial process” and the “reasoning skills involved in the litigation process.”<sup>9</sup> However, this narrow and restricted definition has fallen out of favor to a more broad, but even more ambiguous, ill-defined understanding.<sup>10</sup> Until the past few decades, few people examined the *analytical* basis of “think[ing] like a lawyer” or how it prepared students to enter the workplace as legal professionals.<sup>11</sup> The resulting examination of the phrase “thinking like a lawyer” did not clarify the ambiguity because there are as many definitions as there are commentators.<sup>12</sup> Re-envisioning the law school process requires both a reimagining

---

7. Jack Chowersky, *Thinking Like a Lawyer*, 80 U. DET. MERCY L. REV. 463, 463 (2003).

8. David A. Garvin, *Making the Case: Professional Education for the World of Practice*, HARV. MAG. 56, 58-59 (Sept.-Oct. 2003), <https://harvardmagazine.com/2003/09/making-the-case-html> [<https://perma.cc/9UCC-VB4R>]. Garvin describes “thinking like a lawyer” to be “briefing the case,” which is also the foundation of the case method. The case method is the mode of teaching the law, used by law professors, but it does not clarify what *thinking* like a lawyer means, other than it is the mode of thought used by lawyers when they use the case method.

9. David T. Butle Ritchie, *Situating “Thinking Like a Lawyer” Within Legal Pedagogy*, 50 CLEV. ST. L. REV. 29, 30 (2002-2003).

10. *Id.*

11. Garvin, *supra* note 8, at 58-59.

12. Michelle Harner, *The Value of “Thinking Like a Lawyer,”* 70 MD. L. REV. 390, 390 (2011).



of how we prepare lawyers and a new understanding of the purposes and goals of legal education, something more concrete than a phrase that lacks any unified agreement as to its meaning.

We can no longer be satisfied with a program of legal education that prepared previous generations how to be taught to practice law by their first law firm.<sup>13</sup> However, law schools, like many established and entrenched institutions, have been reluctant to change,<sup>14</sup> even when resistance to change threatens the viability of many law schools through declining enrollment and widespread media and public criticism.<sup>15</sup>

Cyclical challenges to the uniformity and inflexibility of legal education began with the MacCrate Report in 1992.<sup>16</sup> The MacCrate Report resulted in incremental change, but not wholesale reimagining or revision of legal education.<sup>17</sup> Additional challenges to the sufficiency and adequacy of legal education came again in 2007 with the publication of the *Carnegie Report* and *Best Practices in Legal Education*. The *Carnegie Report* and *Best Practices* brought forward the most well-developed and innovative ideas on how to revitalize legal education and challenged law schools to become dynamic and adaptable institutions. Legal commentators began to seriously challenge the usefulness of “thinking like a lawyer” as the opaque, guiding principal for legal education.<sup>18</sup> However, this challenge to the status quo is not complete. While we have improved legal education with piecemeal changes, we have not reimagined law school to meet the demands of an evolving profession while also considering the most current understanding of how people learn.<sup>19</sup>

Law schools have been thoroughly, and deservedly, criticized for failing to teach

13. Neil J. Dilloff, *The Changing Cultures and Economics of Large Law Firm Practice and Their Impact on Legal Education*, 70 MD. L. REV. 341, 346 (2011); see also David Segal, *What They Don't Teach Law Students: Lawyering*, N.Y. TIMES (Nov. 19, 2011), <http://nyti.ms/19uGi8Z> [<https://perma.cc/S3H9-ZMC8>].

14. Karen Tokarz et al., *Legal Education at a Crossroads: Innovation, Integration, and Pluralism Required!*, 43 WASH. U. J.L. & POL'Y 11, 17 (2013) (“However, the tendency of law school faculties to be risk averse when considering curricular reform, combined with the lack of specific prescriptions or methods in the Report for measuring the performance of skills and values, may have diminished the transformative effect of the [MacCrate] Report.”).

15. See Mark Hansen, *Tell Me More: ABA Task Force Urges Law Schools to Make More Information Available to Help Students Assess the Cost of Legal Education*, 101-SEP A.B.A. J. 64 (2015), [http://www.abajournal.com/magazine/article/aba\\_task\\_force\\_urges\\_law\\_schools\\_to\\_give\\_more\\_info\\_to\\_help\\_students\\_assess](http://www.abajournal.com/magazine/article/aba_task_force_urges_law_schools_to_give_more_info_to_help_students_assess) [<https://perma.cc/UKV2-SBXE>]; see also Noam Scheiber, *An Expensive Law School Degree, and No Place to Use It*, N.Y. TIMES (June 17, 2016), <http://nyti.ms/1Yw5Oju> [<https://perma.cc/LR5L-V39N>].

16. A.B.A., LEGAL EDUC. & PROF'L DEV., AN EDUCATIONAL CONTINUUM, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP 5 (1992).

17. Tokarz & Sedillo, *supra* note 14, at 15.

18. Jess M. Krannich et al., *Beyond "Thinking Like A Lawyer" and the Traditional Legal Paradigm: Toward A Comprehensive View of Legal Education*, 86 DENV. U. L. REV. 381, 388 (2009).

19. R. Michael Cassidy, *Reforming the Law School Curriculum from the Top Down*, 64 J. L. ED. 428, 430 (2015). Although the author dismisses the “piecemeal” changes to the legal curriculum as “at worst the equivalent of rearranging the deck chairs on the Titanic,” his own suggestion only encompasses a reimagined third year of law school.

in a manner that helps students learn.<sup>20</sup> However, law schools are not isolated examples of education failing to adopt advances in cognitive and behavioral science; most of higher education has not fully implemented the best, most innovative practices that reflect what we now know about learning and memory.<sup>21</sup> Cognitive and behavioral science related to learning and memory has advanced considerably in the last twenty-five years, but these advances have been isolated from practical applications in the field of professional education.<sup>22</sup> Similarly, there have been limited advances in the theoretical framework of professional education; law school is still relying on outdated models of pedagogy and andragogy that have demonstrated weaknesses.<sup>23</sup> Legal education needs a new theoretical framework based on advances in the science of learning, a framework that is flexible enough to evolve with changes to the profession and to the science of learning. The *Carnegie Report* and *Best Practices* showed the legal academy what needs to be done, but ten years after their publication, law schools have failed to implement the reimagining of the curriculum<sup>24</sup> needed to meet the new reality of legal practice.<sup>25</sup>

The current law school model is built on the elemental model of learning and instruction; however, this model has not kept pace with developments in cognitive science, learning theory, technological changes, or the social or educational roles inhabited by new matriculants. The elemental model of learning views the learner as a machine,<sup>26</sup> where forces (knowledge) are applied to the machine, and a predictable sequence of events (learning) is the result.<sup>27</sup> The elemental model of learning fails to consider the myriad internal forces that affect the learning process.<sup>28</sup> Legal education—with the focus on large classes, minimal teacher-student interaction, and limited peer collaboration—exemplifies the elemental model by assuming the student will learn when placed in front of the external knowledge expounded by the teacher. The current model of legal education, first developed by

---

20. Michael Hunter Schwartz, *Teaching Law by Design: How Learning Theory and Instructional Design Can Inform and Reform Law Teaching*, 38 SAN DIEGO L. REV. 347, 349 (2001) (“[L]aw school instruction as a whole, remains locked into instructional methodology of dubious merit.”); see also Duncan Kennedy, *Legal Education and the Reproduction of Hierarchy*, 32 J. LEGAL EDUC. 591, 596 (1982).

21. Emilie Gerbier & Thomas C. Toppino, *The Effect of Distributed Practice: Neuroscience, Cognition, and Education*, 56 TRENDS IN NEUROSCIENCE AND EDUC. 49, 56 (2015).

22. *Id.*

23. Carolyn Grose, *Beyond Skills Training, Revisited: The Clinical Education Spiral*, 19 CLINICAL L. REV. 489, 491-93 (2013).

24. Louis N. Schulze Jr., *Alternative Justifications for Academic Support II: How “Academic Support Across the Curriculum” Helps Meet the Goals of the Carnegie Report and Best Practices*, 40 CAP. U. L. REV. 1 (2012) (for an explanation of the criticism of Best Practices and failure to fully implement).

25. Sarah Kellogg, *The Uncertain Future: Turbulence and Change in the Legal Profession*, WASH. LAW. (Apr. 2016), <https://www.dcbart.org/bar-resources/publications/washington-lawyer/articles/april-2016-uncertain-future.cfm> [<https://perma.cc/VFA3-4CSY>] (explaining the new reality of legal practice includes “the move from bespoke service; the bypassing of traditional gatekeepers; a shift from a reactive to a proactive approach to professional work; and the more-for-less challenge,” quoting Richard and Daniel Susskind).

26. MALCOLM KNOWLES ET AL., *THE ADULT LEARNER* 22 (7th ed. 2012).

27. *Id.* at 22-23.

28. *Id.* at 23.

Christopher Columbus Landgell at Harvard Law School in the late nineteenth century,<sup>29</sup> parallels the development of the elemental model of learning, first developed by John B. Watson and Edward Thorndike.<sup>30</sup> The elemental model of learning parallels the development of the Socratic Method. Even the modified, or gentler, Socratic Method used at most law schools today requires the learner to absorb learning by watching the question-and-answer between the teacher and a peer; the learning is directed by the teacher, and classmates uninvolved in the dialogue must absorb the learning happening external to them. While the Socratic method remains a useful and productive learning tool for the student who is on call that day, it does not address the learning needs of the rest of the class struggling with challenging and novel material. The elemental model of learning has evolved significantly over the last century, and has largely been replaced in educational psychology by the holistic view of learning, which views the learner as an active, rather than reactive, organism, and understands that individuals organize and categorize knowledge within an existing schema.<sup>31</sup> The holistic model focuses on the processes by which people learn, and the qualitative changes within the learner.<sup>32</sup>

However, neither model of learning and instruction was developed with the idea that *adults* can learn. The theory that adults possess the capacity for learning was not developed until after World War I, beginning with Edward L. Thorndike in 1928 with his publication *Adult Learning*.<sup>33</sup> It is important to note that the development of the modern law school predates the theory that adults can learn by about fifty years; at their inception, law schools could not employ techniques to build understanding in adults because those theories were not yet developed.<sup>34</sup> In lieu of a comprehensive, or even burgeoning, theory of adult learning, law schools developed around ancient ideas by great philosophers; the ancient Chinese and Hebrews developed the case method, and the ancient Greeks developed the Socratic Method.<sup>35</sup> While these techniques still have great value, they are incomplete; they do not reflect the modern challenges of emerging adult and adult students engaged in professional learning. It was not until the 1980's, when scientists discovered that brain plasticity allowed cognitive growth well past the previously understood limits of late adolescence and into adulthood.<sup>36</sup>

While law school has evolved since Langdell's introduction of the Socratic Method at Harvard Law School, legal education has not embraced the wholesale evaluation and design thinking necessary for legal education to meet the needs of novice learners and emerging professionals. Curricular change needs to start at the beginning, in the first-year. Although the first-year of law school is the least

---

29. See ROBERT STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S* 36 (1983).

30. KNOWLES ET AL., *supra* note 26, at 24.

31. *Id.* at 23.

32. *Id.*

33. *Id.* at 36.

34. *Id.* at 35.

35. *Id.* at 34.

36. ROBERT KEGAN & LISA LASKOW LAHEY, *IMMUNITY TO CHANGE: HOW TO OVERCOME IT AND UNLOCK THE POTENTIAL IN YOURSELF AND YOUR ORGANIZATION* 13 (2009).

criticized,<sup>37</sup> it should be revisited with an eye towards applying modern learning science to the difficult task of teaching novice law students to think critically and analyze cases and legal reasoning.<sup>38</sup> The current first-year curriculum is not wholly devoid of value; however, it could be made significantly more effective. The *Carnegie Report* referred to the first-year as the “cognitive apprenticeship,” where students and professors engage in an “ongoing conversation,” where the master (teacher) leads a question and answer with the journeyman (student) to guide the intellectual development of the class.<sup>39</sup> While there is much to be admired in the case dialogue, often referred to as the “signature pedagogy” of law school, it has many deficits when used to teach novice law students who have not yet mastered critical thinking.<sup>40</sup> Employing the case dialogue in the large classrooms that predominate in the first year of law school does not give all students the opportunity to articulate their ideas, as well as their misunderstandings.<sup>41</sup> The case dialogue used in large lecture classrooms is an example of the continuing use of an elemental, instead of holistic, model of learning. The current system leaves too many students behind,<sup>42</sup> and even the best students leave their first-year with gaps in their understanding.<sup>43</sup> Additionally, the large (sometimes very large) classes that predominate in law school, combined with very heavy workload, leaves many students overwhelmed and underprepared.<sup>44</sup>

In addition to the problems with the current curriculum and educational environment, there have been seismic changes affecting the economic and demographic landscape of legal education since the *Carnegie Report on Educating Lawyers* and *Best Practices in Legal Education* were published in 2007. Recession, reorganization, and technological change have radically transformed the legal marketplace, and with it, the market for post-graduate legal employment.<sup>45</sup> The “Great Recession” of 2008 drove many recent college graduates into graduate education to weather the decline in employment options.<sup>46</sup> However, the boom in

37. Gerald P. López, *Transform-Don't Just Tinker with-Legal Education*, 23 CLINICAL L. REV. 471, 508, 522 (2017).

38. See Nelson P. Miller & Heather J. Garretson, *Preserving Law School's Signature Pedagogy and Great Subjects*, MICH. B.J. 46, 46 (2009).

39. WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 60-61 (2007).

40. *Id.* at 61.

41. *Id.*

42. Starla J. Williams & Iva J. Ferrell, *No At-Risk Law Student Left Behind: The Convergence of Academic Support Pedagogy and Experiential Education*, 38 S. ILL. U. L.J. 375, 377 (2014).

43. See Louis N. Schulze Jr., *Alternative Justifications for Academic Support II: How "Academic Support Across the Curriculum" Helps Meet the Goals of the Carnegie Report and Best Practices*, 40 CAP. U. L. REV. 1, 3 (2012).

44. Andrew Benjamin et al., *The Role of Legal Education in Producing Psychological Distress Among Law Students and Lawyers*, 1986 AM. B. FOUND. RES. J. 225, 248 (1986).

45. Edwin B. Reeser, *Law Firms in the Great Recession: Looking for Change in All the Wrong Places*, A.B.A. J. (Sept. 5, 2013), [http://www.abajournal.com/legalrebels/article/law\\_firms\\_in\\_the\\_great\\_recession\\_looking\\_for\\_change\\_in\\_all\\_the\\_wrong\\_places/](http://www.abajournal.com/legalrebels/article/law_firms_in_the_great_recession_looking_for_change_in_all_the_wrong_places/) [https://perma.cc/S5ZT-NB4M].

46. Rebecca R. Ruiz, *Recession Spurs Interest in Graduate, Law Schools*, N.Y. TIMES (Jan. 9, 2010), <http://www.nytimes.com/2010/01/10/education/10grad.html> [https://perma.cc/2NK3-23U8]; Andrea

law school matriculants was not met by a boom in employment opportunities for newly minted attorneys.<sup>47</sup> This boom in interest was met by a bust in applicants less than three years later, as newspapers and pop culture leaped to the conclusion that law school was a boondoggle.<sup>48</sup> Big law firms (the last bastion of high salaries) cut jobs, salaries, and summer programs to adjust to the lack of demand for services during and after the recession.<sup>49</sup> Students who would have worked in “big firms” looked for work in government offices and smaller firms.<sup>50</sup> The newly-minted attorneys who would have sought government work or employment at mid-sized or boutique law firms were forced into small firms or opened shop as solo practitioners,<sup>51</sup> and their lack of preparation for independent legal work spawned its own literature on the deficits of legal education.<sup>52</sup> As early as 2009, thirty-five percent of law students felt unprepared to practice in the legal marketplace.<sup>53</sup> In response to the “new normal” in legal hiring, decreased applicant volume, and bad press, many law schools expanded their experiential and practical curriculum,<sup>54</sup> while leaving their doctrinal curriculum and teaching methods virtually unchanged. The lack of meaningful, substantive *wholesale* revision in post-recession legal education is indicative of resistance to change, even in the midst of a crisis.<sup>55</sup> Law schools that fervently hoped that the “new normal” in law and legal education would fade and that the old normal would reemerge have not yet adjusted to the reality of constant change and evolution across all professional fields, including law.

---

Watson, *Recession Hits 2008 Grads Hard*, INSIDE HIGHER ED (Mar. 7, 2014), <https://www.insidehighered.com/news/2014/03/07/us-data-show-2008-graduates-hit-hard-recession> [<https://perma.cc/KZJ3-J4Y8>].

47. Eli Wald, *Foreword: The Great Recession and the Legal Profession*, 78 FORDHAM L. REV. 2051, 2055 (2010); see Catherine Rampell, *Employment of Recent Law Grads at an Ebb*, N.Y. TIMES (June 8, 2012, 5:16 p.m.), <http://nyti.ms/2a8sMwv> [<https://perma.cc/N39K-SXKL>].

48. David Segal, *Law School Economics: Ka-Ching!*, N.Y. TIMES (July 16, 2011), <http://nyti.ms/1Jg1ny1> [<https://perma.cc/V5HH-MUHX>]; see also Steven Davidoff Solomon, *Debating, Yet Again, the Worth of Law School*, N.Y. TIMES (July 18, 2013, 11:44 a.m.), <http://dealbook.nytimes.com/2013/07/18/debating-yet-again-the-worth-of-law-school/> [<https://perma.cc/XC64-65SW>].

49. Maulik Shah, *The Legal Education Bubble: How Law Schools Should Respond to Changes in the Legal Market*, 23 GEO. J. LEGAL ETHICS 843, 845 (2010).

50. Richard W. Bourne, *The Coming Crash in Legal Education: How We Got Here, and Where We Go Now*, 45 CREIGHTON L. REV. 651, 657 (2012); see also Lisa Faye Petak, *Young Lawyers Turn to Public Service*, N.Y. TIMES (Aug. 19, 2010), <http://nyti.ms/1Hb4Fmy> [<https://perma.cc/6PGC-5NFD>].

51. Elizabeth Olson, *Burdened with Debt, Law School Graduates Struggles in the Job Market*, N.Y. TIMES (Apr. 26, 2015), <https://nyti.ms/1JInb6M> [<https://perma.cc/2JFR-Z8WP>]; see also Deborah Jones Merritt, *What Happened to the Class of 2010? Empirical Evidence of Structural Change in the Legal Profession*, 2015 MICH. ST. L. REV. 1043, 1076 (2015) (“government had limited capacity to absorb 2010 graduates who were unable to find jobs in other sectors.”).

52. Segal, *supra* note 48.

53. *Law Students Feel Unprepared for New Economic Reality*, LEXISNEXIS (Dec. 9, 2009), <https://www.lexisnexis.com/legalnewsroom/lexis-hub/b/careerguidance/archive/2009/12/09/law-students-feel-unprepared-for-new-economic-reality.aspx?Redirected=true> [<https://perma.cc/FDC7-6RCT>].

54. Patrick Meyer, *The Status of Curricular Change During the Industry's Great Recession: Radical, or the New Norm?*, 42 OHIO N.U. L. REV. 155, 184-90 (2015).

55. KEGAN & LASKOW LAHEY, *supra* note 36, at 1.

In addition to the upheaval brought by the economic recession, changes in the preparedness of law school applicants have increased the need for additional support for incoming law students. Since 1961, the study habits of undergraduates have markedly decreased. In 2003, undergraduates spent one-third less time studying than students in 1961.<sup>56</sup> In addition, students are no longer prepared for the two-to-three hours of studying per class per day required to succeed in law school.<sup>57</sup> Along with changes in study habits, the rigor of undergraduate education has markedly decreased over the last fifty years. Using the Collegiate Learning Assessment (CLA), Professors Richard Arum and Josipa Roksa demonstrated that college students are not gaining the “broad competencies” such as critical thinking, problem solving, and analytical skills that are necessary for post-graduate success.<sup>58</sup> Students no longer come to law school ready to master the law; they now need additional supports to master the fundamental learning skills critical to learning the law.<sup>59</sup> These supports can come by way of Academic Support (sometimes called Academic Success) Programs (ASPs).<sup>60</sup> However, ASPs, usually staffed by one or two people, are designed to be limited in scope and limited in the number of students they can help; they are not designed to provide systemic support to entire classes of students.<sup>61</sup> For the current and future generations of law students to be successful in their plans to become practicing attorneys, law schools must build support into the curriculum rather than outsource piecemeal assistance to one or two staff members with little or no job security.

The current generation of entering law students are fundamentally different than prior generations of matriculants in more than just study habits and lackluster competencies. They are younger, both chronologically and maturationally; newer law students are neither adults nor are they children. Psychologist Jeffery Arnett has termed this group “emerging adults” because they have “left the dependency of childhood and adolescence, and hav[e] not yet entered [into] the enduring responsibilities that are normative in adulthood.”<sup>62</sup> These “emerging adults” do not have the characteristics that define adult learners, yet have graduated from adolescence. Adult learners are defined as older than twenty-five, with “adult responsibilities and job experiences,” criteria that are met by less than half of incoming law students.<sup>63</sup> The most current data on law students shows that over half

---

56. Philip Babcock & Mindy Marks, *The Falling Time Cost of College: Evidence from Half a Century of Time Use Data*, 93 REV. ECON. & STAT. 468, 468 (2011).

57. RUTHANN MCKINNEY, *READING LIKE A LAWYER: TIME-SAVING STRATEGIES FOR READING LAW LIKE AN EXPERT VI* (2005).

58. RICHARD ARUM & JOSIPA ROKSA, *ACADEMICALLY ADRIFT: LIMITED LEARNING ON COLLEGE CAMPUSES 21* (2011).

59. *Id.*

60. Louis N. Schulze, Jr., *Alternative Justifications for Law School Academic Support Programs: Self-Determination Theory, Autonomy Support, and Humanizing the Law School*, 5 CHARLESTON L. REV. 269, 275-79 (2011).

61. *Id.*

62. Jeffrey Arnett, *Emerging Adulthood: A Theory of Development from the Late Teens Through the Twenties*, 55 AM. PSYCHOLOGIST 469, 469 (2000).

63. S. REG'L EDUC. BD., *Who is the Adult Learner?*, <http://www.sreb.org/general-information/who-adult-learner> [<https://perma.cc/8PVW-976A>] (last visited Sept. 14, 2018).

of applicants between 2011-2015 (the most recent years for which data was collected) were under twenty-four years old.<sup>64</sup> The traditional signifiers of adulthood occur after most applicants have begun the J.D. program; the median age of first marriage is 26.1 years for women and 28.2 years for men.<sup>65</sup> By 2012, a “record” thirty-six percent of young adults aged 18-31 were still living in their parents’ home.<sup>66</sup> Unlike applicants to other graduate programs, notably MBA programs,<sup>67</sup> law school applicants are not required to have significant work experience, meaning many new matriculants lack experience with professional norms and behaviors. Unlike earlier generations of entering law students, the current group of matriculants are less likely to have the prior knowledge and life experiences necessary to make sense of the complex cognitive, ethical, and professional demands of lawyering.

Not only are many entering law students different from past generations, but legal education does not fit the model of the adult learning process developed by Malcolm Knowles and other leaders in the field of andragogy. Knowles developed a five-to-seven-step process for educating adults: the first stage involves providing a learning climate of comfort, warmth, and informality; during the second step the learner “diagnoses” their learning needs; in the third step, the learner plans experiences to accomplish their personal educational objectives; at the fourth step, implements the learning experience; and lastly, during the fifth step, the learner evaluates and diagnoses his learning needs based on the level of competency established in step three.<sup>68</sup> A cursory examination of legal education makes clear that the andragogical process is a poor fit with the needs of students looking to practice law after graduation. Law is an inherently hierarchical profession;<sup>69</sup> it is neither educationally sound nor appropriate to establish a learning climate of informality and comfort that will be counter-indicated in professional practice. This is not to say that students should be made to feel personally uncomfortable and that law classrooms should be filled with tension, as can be the case.<sup>70</sup> However, part of

---

64. Kim Dustman & Ann Gallagher, *Analysis of Law School Applicants by Age Group: 2011-2015*, (Jan. 2017), <https://www.lsac.org/system/files/inline-files/analysis-applicants-by-age-group.pdf> [<https://perma.cc/6M8H-D2W7>].

65. Diana B. Elliott et al, *Historical Marriage Trends from 1890-2010: A Focus on Race Differences*, (Soc. Econ. & Housing Stat. Div., Working Paper No. 12, 2012), <https://www.census.gov/content/dam/Census/library/working-papers/2012/demo/SEHSD-WP2012-12.pdf> [<https://perma.cc/6LQK-VWZ6>].

66. Richard Fry, *A Rising Share of Young Adults Live in Their Parents' Home*, PEW RESEARCH CTR. SOC. & DEMOGRAPHIC TRENDS (Aug. 1, 2013), <http://www.pewsocialtrends.org/2013/08/01/a-rising-share-of-young-adults-live-in-their-parents-home/> [<https://perma.cc/3Z64-Y5TP>].

67. See generally George F. Dreher & Katherine C. Ryan, *Evaluating MBA-Program Admissions Criteria: The Relationship Between Pre-MBA Work Experience and Post-MBA Career Outcomes*, 43 RES. IN HIGHER EDUC. 727, 727 (2002).

68. MALCOLM S. KNOWLES, THE MODERN PRACTICE OF ADULT EDUCATION 46-49 (1980).

69. For a discussion of class hierarchies within the legal profession, see generally Susan D. Carle, *Re-Valuing Lawyering for Middle-Income Clients*, 70 FORDHAM L. REV. 719 (2001). For a discussion of the structural hierarchies within the judicial system, see Hugo M. Mialon et al., *Judicial Hierarchies and the Rule-Individual Tradeoff*, 15 SUP. CT. ECON. REV. 3, 8-10 (2007).

70. Gary Shaw, *A Heretical View of Teaching: A Contrarian Looks at Teaching, the Carnegie Report, and Best Practices*, 28 TOURO L. REV. 1239, 1256-57 (2012).

the learning process in law school is to acclimate students to social, professional, and structural norms of law, which requires a level of formality and distance between teacher and learner, and later, between attorney and partner, attorney and judge, and attorney and client. The second through fifth steps in the adult learning process presuppose that the learner has sufficient familiarity with the needs of the profession to know where they need experience and what steps should be taken to acquire the necessary learning. Knowles theory of adult learning presumes that the learner is familiar with the professional norms and requirements of the field; most law students are unfamiliar with these requirements until their second or third year of law school. Law students are familiarizing themselves with the norms of the legal profession as they are learning; they are not in a position to evaluate their own learning in the context of professional development.

Neither pedagogy nor andragogy are appropriate for this diverse generation of entering law students; their learning needs are varied, individual, and unique to their circumstances.<sup>71</sup> No theory has yet been developed to address the needs of “emerging adults” who make up almost half of entering law students. And any theory addressing the specific needs of emerging adults would be incomplete when applied to legal education; while many law students would qualify as emerging adults, equally as many would qualify as adults, with significant work experience, familial responsibilities, and financial concerns.<sup>72</sup> There is no one teaching methodology that will work for all law students; and critics of legal education have noted that there is no coherent theory or framework for legal education which “relates how things are presented to how things are learned.”<sup>73</sup> Law schools need a new vision for education that embraces the diversity of life experiences new students bring to their educational experience.

The realization that neither andragogy nor pedagogy is an appropriate model was first recognized in clinical legal education, and this realization dates back to the 1970’s.<sup>74</sup> Although clinical legal education first tried to embrace andragogy as “the coherent, theoretical framework of a methodology-based justification for clinical education,”<sup>75</sup> criticism of this model developed as clinical education moved from peripheral courses in select law schools to essential clinics offered by nearly all law schools. An example of the difficulties of applying one teaching methodology, andragogy, in the law school curriculum is exemplified by the challenges faced at California Western School of Law, and the modifications they made to address student needs show how law schools should adapt the curriculum to the diverse needs of students. California Western experienced the struggle with applying andragogy in their externship program. Central to the andragogical model is the idea that

---

71. See John Lande, *Reforming Legal Education to Prepare Law Students Optimally for Real-World Practice*, 2013 J. DISP. RESOL. 1, 7-8 (2013).

72. See Fry, *supra* note 66.

73. Linda Morton et al., *Not Quite Grown Up: The Difficulty of Applying an Adult Education Model to Legal Externs*, 5 CLINICAL L. REV. 469, 479 (1999).

74. *Id.* at 479-80.

75. Frank S. Bloch, *The Andragogical Basis of Clinical Legal Education*, 35 VAND. L. REV. 321, 345 (1982).



experiential education be “nondirective,” where learning is “predicated on student self-directed learning and reallocation of control” from teacher to student.<sup>76</sup> However, difficulties arise when the andragogical model of self-directedness is applied to students who are not yet “‘adults’ as learning theorists might define them.”<sup>77</sup> Many students come to the process as passive learners, accustomed to be told what to do, and unable to master tasks without external motivation, in the form of professorial guidance.<sup>78</sup> The characteristics of the students, as well as the modifications adopted to address students’ needs, are at odds with the andragogical model of education developed by Malcolm Knowles.

To build a model of legal education that maximizes student learning and professional development in an evolving legal profession, legal educators need to reassess how they view incoming students and develop a new model for teaching and learning. There is no one existing theory or model that represents how law students learn or how legal education should be delivered. These problems need to be grappled with in the context of a profession facing technological and economic change.

#### IV. ROADMAP: GUIDING PRINCIPLES FOR THE FUTURE OF LEGAL EDUCATION

Due to the changed preparation and orientation of entering law students, law school needs to start by rethinking the organization of the law school curriculum and the teaching methods used to reach new law students. Legal education needs to meet students where they are when they matriculate.<sup>79</sup> Meeting the diverse needs of diverse students requires an individualized approach, counter to the large classroom model that predominates at most law schools. Law students come to legal education with differing levels of prior knowledge; understanding of foundational concepts in the humanities, basic quantitative skills, or critical thinking cannot be assumed.<sup>80</sup> To provide incoming students with the foundation to succeed, instruction must be tailored to their readiness.<sup>81</sup> The curriculum needs to focus on mastery, instead of breadth of coverage.<sup>82</sup> Students need to be provided with context to understand higher-order problems.<sup>83</sup> Context can be provided through experiential training that begins on the first day of the first year of law school. Experiential learning provides students with motivating opportunities to help others,<sup>84</sup> and to connect their education to meaningful development of their educational and professional goals.<sup>85</sup> The last year of law school should focus on transition to the profession, when

---

76. Morton, *supra* note 73, at 482.

77. *Id.*

78. *Id.* at 484-85.

79. See NAT’L RESEARCH COUNCIL, HOW PEOPLE LEARN: BRAIN, MIND, EXPERIENCE, AND SCHOOL 53 (2000).

80. See Rebecca Flanagan, *The Kids Aren’t Alright: Rethinking the Law Student Skills Deficit*, 1 BYU EDUC. & L.J. 135, 135-36 (2015).

81. JEROME BRUNER, THE PROCESS OF EDUCATION ix (1977).

82. See NAT’L RESEARCH COUNCIL, *supra* note 79, at 53-6.

83. *Id.* at 62-63.

84. See *id.*

85. *Id.* at 73.

students have already developed their personal and professional goals. The last year should assist them in moving from advanced learner to novice practitioner and fledgling professional.

While increased participation in experiential training will take time away from theoretical instruction, doctrinal coverage should focus on in-depth exploration of critical foundational topics, and return to those topics throughout the first two years as students gain context from experience.<sup>86</sup> This spiral of learning, first developed by cognitive psychologist Jerome Bruner,<sup>87</sup> allows students to return to topics and doctrines as they gain greater intellectual understanding and professional maturity.<sup>88</sup> With each return to a topic, breadth and complexity of coverage expands and students increase the depth of their understanding.

The spiral of learning would radically change the structure of legal education. Students could no longer “cram” material in their first year of law school and forget it until they begin studying for the bar exam. The spiral would place less stress on students, because it would begin with in-depth mastery of limited coverage, instead of superficial familiarity with vast bodies of doctrine. As students gain mastery of foundational concepts, their understanding can be connected to their experiences, through basic service learning in the first year and in-depth experiential and clinical practice in later years.<sup>89</sup> By providing context and experience, students transfer knowledge to practice.<sup>90</sup>

#### *A. Breaking Down the Process: The Spiral Curriculum Applied to Legal Learning*

The spiral curriculum would shape the curriculum, beginning in the first year and continuing through graduation.<sup>91</sup> A spiral curriculum is built around the “great issues, principles, and values” that provide fundamental and continual challenge to a profession, society, or community.<sup>92</sup> The spiral curriculum focuses on “coherent wholes” rather than disconnected knowledge and skills, facilitating transfer of knowledge and skills across contexts.<sup>93</sup> To adopt the spiral curriculum, law schools would need to decide on the essential topics and issues within each doctrinal subjects that are “so basic and fundamental to the discipline” that further learning cannot be

---

86. *Id.* at 65.

87. Matt Schudel, *Jerome S. Bruner, Influential Psychologist of Perception, dies at 100*, WASH. POST (June 7, 2016), [https://www.washingtonpost.com/national/jerome-s-bruner-influential-psychologist-of-perception-dies-at-100/2016/06/07/033e5870-2cc3-11e6-9b37-42985f6a265c\\_story.html?utm\\_term=.ee737b09e4b6](https://www.washingtonpost.com/national/jerome-s-bruner-influential-psychologist-of-perception-dies-at-100/2016/06/07/033e5870-2cc3-11e6-9b37-42985f6a265c_story.html?utm_term=.ee737b09e4b6) [https://perma.cc/Z3YM-9CM2].

88. *See id.*

89. *See* Krannich, *supra* note 18, at 388-89.

90. *See* NAT’L RESEARCH COUNCIL, *supra* note 79, at 78.

91. Steven I. Friedland, *Trumpeting Change: Replacing Tradition with Engaged Legal Education*, 3 ELON L. REV. 93, 97 (2011). As noted by Professor Friedland, any transformative model must commence “with its signature qualifications immediately in order to set the tenor and create the culture for the education.” *Id.*

92. BRUNER, *supra* note 81, at 52.

93. *See* NAT’L RESEARCH COUNCIL, *supra* note 79, at 138.

accomplished without mastery,<sup>94</sup> and how to assess these fundamentals so that students cannot move to more complex materials until all misconceptions are remediated.<sup>95</sup> Deciding on what constitutes the “great issues, principles, and values” in each first-year doctrinal subject matter has the potential to both revitalize first-year learning and enrage academics who believe that *all* current first-year coverage is “great.”<sup>96</sup> The uniformity of the first-year curriculum across the majority of American law schools is symbolic of the academic torpor of the first year; despite volumes of literature on reform of the law school curriculum, very little of it is devoted to rethinking coverage in the first year. First-year coverage may represent the foundational topics within law, but it has not evolved with the law or with the needs of students.<sup>97</sup> More work needs to be devoted to thinking through what the issues are that provide essential knowledge for more complex learning, and what issues and concepts would be better covered in upper-level seminars that can delve into the more complicated and inter-connected nature of those issues. Although changes to the first-year curriculum will enrage traditionalists, change should not be mistaken for elimination. Coverage will be extended over two years, allowing for a depth and richness within coverage that is currently inappropriate within the first year.

Removing some concepts from the first-year curriculum to devote more time to in-depth mastery and understanding does not mean students will see fewer topics, concepts, or issues throughout their law school career. The spiral curriculum would ultimately cover the same amount of foundational material, but over a longer period of time (two years instead of one), with a focus on mastery learning and transfer of concepts across doctrines, problems, and practice scenarios. The spiral curriculum requires an “iterative revisiting” of these great issues initially approached in the first year.<sup>98</sup> “Iterative revisiting” is not to be confused with repetition; each successive encounter builds upon prior learning from the earlier exposure.<sup>99</sup> The spiral curriculum requires these repeated “passes” through material at increasingly sophisticated levels of understanding; but students cannot move to more advanced understanding without mastery of the original learning.<sup>100</sup> Critical to the success of the spiral curriculum is in-depth mastery of original learning;<sup>101</sup> so when knowledge reappears in later courses, it can be mastered at a “progressively higher level of

---

94. J. Ronald Gentile, *Assessing Fundamentals in Every Course Through Mastery Learning*, 100 NEW DIRECTIONS FOR TEACHING AND LEARNING 15, 15 (2004).

95. See NAT'L RESEARCH COUNCIL, *supra* note 79, at 15.

96. Nelson P. Miller & Heather J. Garretson, *Preserving Law School's Signature Pedagogy and Great Subjects*, MICH. B.J., at 46 (May 2009) (“The first-year subjects are the foundation of our society.”)

97. One of the frequent criticisms of law school is that it has not evolved with the regulatory state, and still focuses on a system of law that no longer exists. By reviewing what is essential in the first-year, law schools can address this criticism—as well as others—about the evolution of law.

98. R.M. Harden & N. Stamper, *What is a Spiral Curriculum?*, 21 MED. TEACHER 141, 142 (1999).

99. *Id.* at 141.

100. See NAT'L RESEARCH COUNCIL, *supra* note 79, at 53.

101. BRUNER, *supra* note 81, at 57.

learning.”<sup>102</sup> The spiral curriculum is an improvement to the current model of legal education because it deals with some of the problems encountered during the first and second year of law school.

Iterative revisiting has its foundation in three concepts affirmed by research in cognitive and behavioral science: testing, the spacing effect, and interleaving. These three concepts have been the focus of educational research for many years, but they have been recently popularized by the book *Make It Stick: The Science of Successful Learning* by journalist Peter C. Brown, and cognitive psychologists Henry L. Roediger III and Mark A. McDaniel.<sup>103</sup> *Make It Stick* relied on ten years of research by the James S. McDonnell Foundation. Although the book is popular and easily readable for lay audiences, its educational claims are grounded in many years of advanced cognitive and behavioral research.<sup>104</sup> The core concepts in the spiral curriculum are simply referred to as “learning” by Brown, Roediger, and McDaniel. The authors define learning as “an iterative process that requires you revisit what you have learned earlier and continually update it and connect it with new knowledge;” this is also the essence of the spiral curriculum.<sup>105</sup>

Learning, as it is called by Brown, Roediger, and McDaniel, is cemented by testing. Testing, especially testing before the student has discovered the correct steps for formulating a solution or answer, improves learning.<sup>106</sup> This type of testing is not the summative assessments that we have come to think of when we think of the word “test.” Students need tests that focus on retrieval of information, or recall, in order to cement the knowledge they must use for more sophisticated, complex learning. An example of this would be a short-answer quiz on the basic vocabulary in Property. Law school relies on students learning this basic vocabulary, but few students, or professors, understand how students should learn this essential information. It is often forgotten that students cannot learn how to distinguish complex cases and rules if they have forgotten the essential vocabulary of the doctrine.<sup>107</sup> “Retention of knowledge” is “essential for reaching other instructional objectives” because students cannot apply foundational knowledge and use correct terms of art if they do not remember them.<sup>108</sup> Students need frequent, scheduled tests of recall built into their courses to strengthen long-term memory and depress the rate of forgetting.<sup>109</sup> This type of testing is not a neutral event; testing is a “critical factor

---

102. Vinod K. Lohani et al., *Work in Progress-Spiral Curriculum Approach to Reformulate Engineering Curriculum*, PROCEEDINGS FRONTIERS IN EDUCATION 35TH ANNUAL CONFERENCE 1, 2 (2005), <http://ieeexplore.ieee.org/stamp/stamp.jsp?tp=&arnumber=1612007&isnumber=33854> [https://perma.cc/BJ2Q-F9GD].

103. PETER C. BROWN ET AL., *MAKE IT STICK: THE SCIENCE OF SUCCESSFUL LEARNING* (2014).

104. *Id.* at x.

105. *Id.* at 21-22.

106. *Id.*

107. *Id.* at 15-16.

108. John Dunlosky et al., *Improving Students' Learning with Effective Learning Techniques: Promising Directions from Cognitive and Educational Psychology*, 4 PSYCHOL. SCI. PUB. INT. 4, 7 (2013).

109. Doug Rohrer & Harold Pashler, *Recent Research on Human Learning Challenges Conventional Instructional Strategies*, 39 EDUC. RESEARCHER 406, 406-07 (2010).

for promoting long-term recall.”<sup>110</sup> Testing for recall is the process of learning by testing retrieval; the more a student tests their knowledge, even unsuccessfully, the better they encode the knowledge.<sup>111</sup> Long-term remembering is especially critical in law school, where students are expected to recall information learned in the first-year three years later on the bar exam.

Professors believe students should be doing this on their own time, but few students know how to effectively study, or learn, new material, and instead rely on ineffective techniques, such as highlighting and rereading, that are unlikely to result in long-term encoding or learning.<sup>112</sup> Another popular book, Benedict Carey’s *How We Learn*, popularized many of the same study techniques as *Make It Stick*, and also focuses on what people do incorrectly. Carey begins his exploration into learning by recounting what he did wrong as a high school student, and what he did correctly as a college student at the University of Colorado.<sup>113</sup> All of the techniques students rely on and professors routinely suggest to their classes do little to help students store (or learn) or retain (or recall) the information they should be learning.<sup>114</sup> Inadvertently, Carey picked up some of his best study techniques by “never let[ting] go of my studies—just allowing them to become part of my life, rather than the central purpose.”<sup>115</sup> His unconscious, “ad hoc” approach<sup>116</sup>—allowing forgetting of material (by having a life in between studying), interleaving his study sessions, and self-testing, fostered better learning than flashcards and cramming.<sup>117</sup> But these techniques are still not widely employed despite two popular books exalting their utility, as well as a wealth of scientific research and peer-reviewed journal articles explaining how these non-traditional models work. These are not the models of learning that are employed in law schools or touted by law professors, and these methods are not well-suited for the current law school curriculum.

Building better study and learning habits must begin with the testing procedures in first-year classes. Testing is not a favorite topic for students or their professors, who must devote time to that most loathed responsibility—grading. Therefore, testing needs to be a part of the structure of educational program and not left to the personal choice of individual professors, who have no desire to grade and would be easily swayed by students who have no desire to study for a test. Testing does not need to be formal to improve recall and retention of knowledge; it can be in the form of quizzes, flashcards, or in the form of homework.<sup>118</sup> Frequent in-class and out-of-class testing will require more time devoted to the taking of the tests themselves, as

---

110. Jeffrey D. Karpicke & Henry L. Roediger III, *The Critical Importance of Retrieval for Learning*, 319 SCI. 966, 967 (2008).

111. Philip Grimaldi & Jeffrey Karpicke, *When and Why Do Retrieval Attempts Enhance Subsequent Encoding?*, 40 MEMORY & COGNITION 505, 505 (2012).

112. See Dunlosky, *supra* note 102, at 5.

113. BENEDICT CAREY, *HOW WE LEARN: THE SURPRISING TRUTH ABOUT WHEN, WHERE, AND WHY IT HAPPENS* X-XI (2014).

114. *Id.* at 36-37.

115. *Id.* at xi.

116. *Id.* at xii.

117. *Id.* at ix.

118. See generally *id.* at 93-103.

well as review by students, and grading by professors. Students will have less time for reading new material if they are testing their prior learning. This process will help decrease forgetting and increase learning, but it will require slower coverage of less material in the first-year. However, this structure can provide benefits to both professors and students in the long-term. Students will have a better understanding of foundational concepts learned in their first year and be more ready to learn complex problems and issues in their second year. Students will be less likely to “tune out” in class because they are overwhelmed by material they do not adequately understand;<sup>119</sup> and professors will reap the benefit of engaged students ready to tackle the advanced problems that professors themselves find fascinating.

Along with frequent testing, the curriculum should be structured around distributed practice, also known as the spacing effect. Distributed practice is defined as “scheduling relatively short study sessions that can be repeated after an appropriate period of time rather than by devoting the same total amount of time to a single study session or to . . . repeated study sessions . . . in immediate succession.”<sup>120</sup> The benefit of distributed practice is known as the spacing effect: the finding that information that is studied, and restudied after a delay, is recalled better in the long-term.<sup>121</sup> The spacing effect of distributed practice has been extensively studied<sup>122</sup> and is consistent with the folk wisdom that students should not cram for an exam, but study over the course of a semester.<sup>123</sup> Students tend to be resistant to distributed practice, especially when combined with testing, because it is difficult.<sup>124</sup> Distributed practice leads to forgetting; forgetting leads to more difficulty trying to recall information during performance tasks.<sup>125</sup> But this initial forgetting between study sessions is an essential part of learning and long-term retention; “easy, rapid learning and long-term retention are not correlated.”<sup>126</sup> Learning that is retrieved multiple times, over long periods of time, is not stored with specific context because the context changes with each retrieval, creating greater memory traces and a greater likelihood of retrieval in the future.<sup>127</sup> There are several theories that explain why it is easier to immediately perform after massed practice, but this learning is not durable or stable.<sup>128</sup> Unless distributed practice is built into the curriculum, much like testing, students will resist not only because it is more difficult, but because the results are not immediate. If the goal of learning is to gain

---

119. Rick Reis, *Boredom Busters, Tomorrow's Teaching and Learning*, STAN. UNIV., excerpted from Jennifer Fletcher, *Fostering Habits of Mind in Today's Students: A New Approach to Developmental Education* (2015), <https://tomprof.stanford.edu/posting/1469> [<https://perma.cc/7LNA-WYGF>].

120. Gerbier & Toppino, *supra* note 21, at 50.

121. Monica S. Birnbaum et al., *Why Interleaving Enhances Inductive Learning: The Roles of Discrimination and Retrieval*, 41 *MEMORY & COGNITION* 392, 392-93 (2013).

122. Irina V. Kaplan et al., *Spacing in a Simulated Undergraduate Classroom: Long-Term Benefits for Factual and Higher-Level Learning*, 36 *LEARNING & INSTRUCTION* 38, 38 (2015); see also Gerbier & Toppino, *supra* note 21, at 50.

123. Gerbier & Toppino, *supra* note 21, at 55.

124. *Id.* at 56.

125. *Id.* at 54, 56.

126. *Id.* at 56.

127. Kaplan et al., *supra* note 122, at 42.

128. Gerbier & Toppino, *supra* note 21, at 50-51.

skills and knowledge for a lifetime, the focus needs to be on long-term retention and transfer, which are both assisted by a curriculum that is built around these goals.

In addition to the benefits of long-term retention of knowledge, distributed practice and the spacing effect have significant, long-term benefits when applied to learning across a curriculum, when retrieval is spaced across months and years, not limited to semesters and individual courses.<sup>129</sup> When distributed practice is applied across an expanded schedule of months and years, providing multiple encounters with material over long, spaced intervals of time, it yields “long-term retention and efficient use of information in new contexts (i.e. transfer).”<sup>130</sup> Research has found that the best lag time between study sessions for 350 days of retention is a 21 day interval.<sup>131</sup> In law, we are seeking retention longer than 350 days; we are hoping for retention that lasts a lifetime, or at least, until students reach the bar exam. Neuroscience suggests that the longer you want to retain knowledge, the longer you have to space the intervals between study sessions.<sup>132</sup> There is a limit to how long intervals can be spaced when the curriculum is built around semester-long classes, without a deliberate, planned revisiting of information in later courses. By applying a spiral curriculum, with distributed learning spread across three years of study, with increasingly more complex problems crossing doctrinal boundaries, students reap the benefits of durable, long-term learning, learning that is more readily transferred to new, novel problems. Additionally, students can practice transfer of knowledge as the problems become more complex in later courses. Transfer is an essential part of successful learning and critical to success in later practice.

The last element of the recent research supporting the utility of a spaced, spiral curriculum is interleaving. Interleaving is the process of studying mixed topics (e.g., abcabcabc), in contrast to blocked studying (e.g., aaabbbccc).<sup>133</sup> It is often mentioned in the same research that discusses the benefits of distributed practice because they work together; students should not only space the intervals between study sessions, but those study sessions should include mixed topics, instead of focusing on only one discrete area of knowledge or one particular skill. Interleaving, on its face, is counterintuitive; it would seem that students need massed, or blocked practice of one concept before moving onto a new concept. While it is true that students need mastery of a concept before moving on to new material,<sup>134</sup> it is not true that continuing to study only one subject after original mastery increases learning or enhances retention. However, educational researchers have discovered that learning, specifically inductive learning, is greatly enhanced by interleaving exemplars of a concept with concepts that contrast with the exemplar.<sup>135</sup> Interleaving works through discriminative contrast; allowing students to differentiate between examples and

---

129. *Id.* at 52.

130. *Id.* at 56.

131. *Id.* at 53.

132. *Id.*

133. Rohrer & Pashler, *supra* note 109, at 409.

134. Gerbier & Toppino, *supra* note 21, at 54 (“[T]he spacing effect is observed only for those items that are recognized when they are repeated.”).

135. Birnbaum et al., *supra* note 115, at 393.

thereby enhancing their understanding of what criteria is essential for each category.<sup>136</sup> Once students know the characteristics of a category, they can better categorize when presented with novel examples. Interleaving faces some of the same problems as distributed study; initially, it is much more difficult and it does not achieve immediate results.<sup>137</sup> Interleaved study, when paired with distributed practice, forces students to look for the solution among many examples in their long-term memory, instead of simply retrieving the most recent solution from working memory.<sup>138</sup>

Currently, law schools use inductive reasoning and interleaving throughout individual doctrinal courses; students read an exemplar case, learn the rule from that case, and then read additional cases that exemplify that rule or contrast the rule to show the different ways the policy or broader principles can apply. The problem with the current method of interleaving in individual courses in law school, especially in the first year, is that students are rarely told which case is the exemplar and which cases are meant to contrast the exemplar. Professors believe the process of discerning the exemplar is part of learning the law. This presents an impediment to learning for many students; they never recognize the exemplar and assume all cases they read for a course present a unique rule. This is a failure of interleaving; unless a student knows what to look for, they cannot see the contrast. Interleaving in an individual course requires students to know when they are presented with an exemplar of law. This allows students to see the contrasts, not only in that doctrine, but later, the differences between broad concepts and policies between doctrinal boundaries. Professors who believe law school learning requires students to discover the exemplar amongst exceptions without additional guidance fail to appreciate the challenges faced by novices learning unfamiliar doctrine without context provided by prior learning. By properly learning the exemplars, or foundational concepts (sometimes referred to as black letter law), students better understand the process of legal analysis. Students with a solid understanding of the foundational concepts in law are better able to see nuances and deviations, allowing for better grasp of how to distinguish legal facts.

However, law schools do not usually interleave policy and concepts across courses and doctrinal subjects. Students rarely have the opportunity to see how doctrinal areas work together or how broader policies and concepts cut across doctrinal boundaries. Because courses do not cut across doctrinal boundaries, unlike in the practice of lawyering, students do not interleave their study. Students block, or mass, their study into doctrinal subjects, focusing on one area before moving to another. Students learn that one type of rule can be applied to only one type of problem based on specific facts; they do not have the opportunity to see that a rule can have multiple applications in different doctrinal areas, or conversely, how one rule can be inextricably bound to one area of doctrine because of the specificity or

---

136. See Norehan Zulkiply & Jennifer S. Burt, *The Exemplar Interleaving Effect in Inductive Learning: Moderation by the Difficulty of Category Discriminations*, 41 *MEMORY & COGNITION* 16, 17 (2013).

137. Dunlosky et al., *supra* note 108, at 44.

138. *Id.*



peculiarities of the subject matter. A clustered, spiral curriculum that focuses on in-depth learning in only two core doctrinal areas allows a different mix of subjects and experiences throughout the curriculum, creating more opportunities for interleaved learning and studying. Students can begin with intensive study in Property and Contracts, matched to service-learning in a landlord-tenant clinic and small claims practice. Students can see how leases are contracts and how those contracts are governed by both Property and Contract concepts. In the second year, an advanced cluster can match sales and regulation of Real Property with Constitutional Law, with experiential learning in a public agency focusing on land use regulation. An interleaved curriculum opens up possibilities for summative assessments that focus on real-world skills. Asking students to produce a memo updating local developers on recent zoning changes tests students while providing them with work product that can be a part of a portfolio for employer interviews.

The process of “iterative revisiting,” as it is called in the spiral curriculum, or conversely, testing, the spacing effect, and interleaving, as it is called in cognitive and behavioral science research, has the potential to alleviate one of the more vexing problems in legal education: falling bar pass rates. Since the ABA allowed for-credit bar courses to be a graduation requirement in 2008,<sup>139</sup> these courses have spread across law schools, from one course in the third year to multiple courses spread across the second and third years.<sup>140</sup> Despite the spread of these courses, bar pass rates have been falling across the nation since 2014.<sup>141</sup> The spiral curriculum’s focus on revisiting great issues, with increasing complexity, can alleviate the need to re-teach bar topics in the third year because students will not have the opportunity to forget issues and topics between the first and third year of law school. By organizing the curricula to focus on conceptual understanding instead of superficial coverage, law students will be better at retrieving appropriate knowledge to solve a particular task.<sup>142</sup> Law students who have conditionalized knowledge—an understanding of specific contexts in which their knowledge will be useful in solving a problem<sup>143</sup>—will be faster and more efficient problem solvers on the bar exam, without additional third-year courses devoted to relearning first-year material. Conditionalized knowledge requires expertise, and expertise requires mastery of original learning and

---

139. Catherine L. Carpenter, *Recent Trends in Law School Curricula: Findings From the 2010 ABA Curriculum Survey*, THE BAR EXAMINER at 6, 9 (June 2012) [http://www.ncbex.org/pdfviewer/?file=%2Fassets%2Fmedia\\_files%2FBar-Examiner%2Farticles%2F2012%2F810212beCarpenter.pdf](http://www.ncbex.org/pdfviewer/?file=%2Fassets%2Fmedia_files%2FBar-Examiner%2Farticles%2F2012%2F810212beCarpenter.pdf) [https://perma.cc/35TE-DM2M?type=image].

140. Summary data on bar preparation courses, on file with the author.

141. *2015 Statistics*, THE BAR EXAMINER at 30 (Mar. 2016), [http://www.ncbex.org/assets/media\\_files/Bar-Examiner/articles/2016/BE-March2016-2015Statistics.pdf](http://www.ncbex.org/assets/media_files/Bar-Examiner/articles/2016/BE-March2016-2015Statistics.pdf) [https://perma.cc/9SFW-GZG4]; see also Jacob Gershman, *Are Lawyers Getting Dumber? Empty Theory or Troubling Trend*, WALL ST. J. (Aug. 20, 2015), <http://blogs.wsj.com/law/2015/08/20/are-lawyers-getting-dumber-empty-theory-or-troubling-trend/> [https://perma.cc/62CC-CXGH]; Sarah Randazzo, *Bar Exam Passage Rates Nationwide Keep Dropping*, WALL ST. J. (Nov. 24, 2015), <http://blogs.wsj.com/law/2015/11/24/bar-passage-rates-keep-dropping-across-the-country/> [https://perma.cc/ST5S-C7KJ].

142. See NAT’L RESEARCH COUNCIL, *supra* note 79, at 42-43.

143. *Id.* at 43.

foundational concepts.<sup>144</sup>

The benefits of focusing on mastery learning of fundamentals has been well established in the science of teaching and learning.<sup>145</sup> The current law school curriculum focuses on a great breadth of coverage in the first year.<sup>146</sup> The mandated curve, or norm, that predominates at most law schools acts as a sorting mechanism;<sup>147</sup> students who can master breadth of knowledge and apply it on a winner-takes-all final exam are winners in a race to law review, Order of the Coif honors, and lucrative “big law” positions.<sup>148</sup> But this method of assessment relies on luck, speediness, and leaves behind a tremendous number of students who may understand the material, but cannot demonstrate mastery on that day, or in the chosen format.<sup>149</sup> Perhaps the most pernicious effect of the winner-takes-all exam is the focus on superficial understanding of a great breadth of material, instead of in-depth mastery of fundamental concepts.<sup>150</sup> It is impossible to test all the material covered in a semester in one three-hour or four-hour exam, but students must try to memorize facts, tests, and procedures for a semester’s worth of coverage. This focus on memorizing facts and procedures comes at the expense of “a deep foundation of factual knowledge” and ability to apply factual knowledge to novel concepts connected to the contextual framework in the doctrinal subject matter.<sup>151</sup> The success of the cognitive apprenticeship is based on the first year providing the foundation for deep learning, but it does not do that for many students who struggle through their first year because of lack of context for the studied material, or who are overwhelmed by the study time required for mastery. To reform the first-year experience to focus on developing competence, instead of coverage, law schools would need to reframe the focus of first-year courses to focus on in-depth mastery of a more limited area of doctrinal

---

144. *Id.*

145. *See id.* at 20.

146. For more information on why law faculty place undue emphasis on breadth of coverage over depth of understanding, *see* Douglas J. Whaley, *Teaching Law: Advice for the New Professor*, 43 OHIO ST. L.J. 125, 127 (1982). Prof. Whaley observes that “at most law schools the overwhelming majority of students will need [a professor’s] knowledge for the daily practice of law. If you teach the subject in such depth that you get around to covering only half of the material in the book, your former students will remember you with hatred as they encounter the major unexplored areas in their practice . . .” *Id.* This observation highlights the focus on “*encountering*” material instead of *understanding and applying* what is learned in class (emphasis added).

147. Leslie M. Rose, *Norm-Referenced Grading in the Age of Carnegie: Why Criteria-Referenced Grading is More Consistent with Current Trends in Legal Education and How Legal Writing Can Lead the Way*, 17 LEGAL WRITING: J. LEGAL WRITING INST. 123, 124 (2011).

148. *See* Andrew Jay McClurg, *Neurotic, Paranoid Wimps-Nothing Has Changed*, 78 UMKC L. REV. 1049, 1050 (2010); *see also* Ron M. Aizen, *Four Ways to Better 1L Assessments*, 54 DUKE L.J. 765, 766 (2004).

149. *See* Gary Monserud, *An Essay on Teaching Contracts and Commercial Law for the First Time (Even if You Have Taught These Courses Many Times Before)*, 82 N.D. L. REV. 113, 118 (2006) (“The simple fact is that gaining a J.D. degree, even with the highest honors, signifies that a person has had a good introduction to law and probably is quite adept at learning law and expressing that learning in written exercises under stress—but it signifies little more.”).

150. *See* Barbara Glesner Fines, *Out of the Shadows: What Legal Research Instruction Reveals About Incorporating Skills Throughout the Curriculum*, 2013 J. DISP. RESOL. 159, 183-84 (2013).

151. *See* NAT’L RESEARCH COUNCIL, *supra* note 79, at 16.

material. The core tenet of the spiral curriculum is the revisiting of the material with a “new level of formal or operational rigor and to a broader level of abstraction and comprehensiveness.”<sup>152</sup> By moving from the simple to the complex in a controlled way,<sup>153</sup> students are less likely to feel overwhelmed by the vast breadth of coverage, limiting the anxiety and panic that often accompanies the first year of law school.<sup>154</sup>

Reforming the first-year learning process also requires a more thorough understanding of the prior knowledge and misconceptions matriculating students bring to their learning. Students come to law school with a wide variety of experiences and levels of understanding of the legal process and civics; many matriculants come to law school with only the most rudimentary understanding of the legal system. Law schools do not require any specific courses or majors as a prerequisite for matriculation, creating a broad spectrum of understanding, and sometimes, misunderstanding.<sup>155</sup> If the initial misconceptions and misunderstandings of the basics of the legal system are not addressed, students struggle with new concepts and information as it is presented in first-year courses.<sup>156</sup> Research has demonstrated the persistence of misunderstandings and preconceptions among older students even after being taught correct information. To correct these misperceptions, students need in-depth coverage, contextual understanding of the new knowledge, and opportunity to test their knowledge.<sup>157</sup> In addition to struggling with incorporating new knowledge that may not be consistent with prior misconceptions and incomplete understanding, students struggling with a vast breadth of coverage will not learn new information at the level of understanding they need to succeed in upper-level courses, but revert to misconceptions after the conclusion of the course.<sup>158</sup> This problem is hard to measure on a course-by-course basis because few professors follow students through multiple, interrelated courses during their law school careers, so these misconceptions and misunderstandings of original learning become problematic when students begin studying for the bar exam.<sup>159</sup> These students are the mysteries of bar failure because they have appeared to be modestly competent during individual courses, but their recurrent and uncorrected misconceptions and misunderstandings lead to failure on the bar exam.

Correcting misunderstandings and misperceptions requires law schools to have a more thorough understanding of matriculants’ prior knowledge as well as their level of understanding as they master new material. Law schools currently have very little information about the prior learning of applicants before the start of the first year. While all students are required to submit standardized tests scores, most commonly the LSAT, as well as undergraduate college transcripts, these provide

---

152. BRUNER, *supra* note 81, at 3-4.

153. R.N. HARDEN & N. STAMPER, *supra* note 98, at 142.

154. See Steve Sheppard, *An Informal History of How Law Schools Evaluate Students, with A Predictable Emphasis on Law School Final Exams*, 65 UMKC L. REV. 657, 693 (1997).

155. See Rebecca Flanagan, *Pre-competencies as Precursors: Enhanced Admissions Criteria in the Age of Seat-Deposit Anxiety*, NEV. L.J., 181, 184-85 (2016).

156. See NAT’L RESEARCH COUNCIL, *supra* note 79, at 14.

157. See *id.* at 16.

158. See *id.* at 15.

159. See *id.* at 14-15.

very little useful information on the prior learning of applicants. The LSAT is designed to predict aptitude, not measure prior learning.<sup>160</sup> An applicant may excel at logic games but be completely misinformed about the basic structure of the federal government. The current structure of legal education does not allow time for students to learn the antecedent knowledge that may be familiar to their peers, so misconceptions are left unchallenged. Undergraduate transcripts are designed to provide more information by listing undergraduate courses and grades. However, the variability of undergraduate courses and coverage,<sup>161</sup> combined with widespread grade inflation,<sup>162</sup> results in transcripts that provide very little meaningful information about the prior learning of applicants. Currently, there is no mechanism in the first-year curriculum to assess student misconceptions; the curriculum jumps into doctrinal learning on the first day of class.<sup>163</sup> Law schools need new tools to measure what skills and knowledge students possess before they matriculate. While law schools would be hesitant to require another standardized test for applicants,<sup>164</sup> it is possible to require a short test, similar to Core Grammar for Lawyers,<sup>165</sup> but focused on basic humanities and essential knowledge, to be taken after the second seat deposit or during orientation. For schools reluctant to add a standardized test, the spiral curriculum's focus on mastery of fundamental concepts allows faculty to provide in-time remediation to students before they move on to more complex topics and skills. The focus on in-depth mastery, instead of breadth of coverage, allows faculty and students to slow the progress of the course to match student readiness, instead of moving through material at the predetermined pace of the syllabus.

Critical to the process of assessing prior knowledge and correcting misunderstandings and misconceptions is frequent assessment with timely feedback. In-depth learning and limiting initial coverage to fundamental concepts and issues allows more time for assessment throughout the curriculum. Feedback is essential to learning; learners need frequent, timely feedback to monitor their understanding, and if misunderstanding, to adjust their approach to learning the material.<sup>166</sup> Despite ABA standards requiring formative and summative assessment in the law school curriculum,<sup>167</sup> as well as empirical studies reaffirming the importance of formative

---

160. "The LSAT is designed specifically to assess key skills needed for success in law school, including reading comprehension, analytical reasoning, and logical reasoning. Extensive research has shown that the LSAT score is a strong predictor of first-year law school success." *About the LSAT*, LAW SCH. ADMISSIONS COUNCIL <http://www.lsac.org/jd/lsat/about-the-lsat> [<https://perma.cc/JG67-CG9H>].

161. See Flanagan, *supra* note 155, at 184-85.

162. Stuart Rojstaczer & Christopher Healy, *Where A is Ordinary: The Evolution of American College and University Grading*, 114 TEACHERS C. REC. 1, 6 (2012).

163. Dan Morris & Andrew Mazoff, *Law School's Role in Building the Future Practitioner: A Perspective*, 3 PHOENIX L. REV. 407, 408 (2010).

164. See Carey, *supra* note 113, at 93.

165. See CORE GRAMMAR FOR LAWYERS, <http://www.coregrammarforlawyers.com> [<https://perma.cc/LPT2-LU2P>]; see also *Core Grammar for Lawyers*, CAROLINA ACADEMIC PRESS, <http://www.cap-press.com/books/isbn/9781611635843/Core-Grammar-for-Lawyers> [<https://perma.cc/T4QA-ARJ7>].

166. See NAT'L RESEARCH COUNCIL, *supra* note 79, at 78.

167. See *Managing Directors' Guidance Memo: Standards 301, 302, 314 and 315*, ABA SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR (June 2015),

assessment and feedback to law school success,<sup>168</sup> most law schools still place most of the curricular focus on summative assessments with little or no feedback throughout the semester.<sup>169</sup> The terminal nature of summative assessments make it unlikely that any student will return to review a prior exam unless they are uniquely motivated or required to view it, usually because they are on academic status such as probation, that threatens their legal studies. The majority of students become too distracted by their next course to review errors from their past courses and learn how to fix poor writing, disorganization, or misunderstandings of law. Students need to practice review and correction as a part of the self-reflective process. Current law school curricula and practices discourage this process; implementation of a spiral curriculum would provide motivation to consistently review prior assessments because the learning in earlier courses is the foundation for later courses and learning. Future success depends on the self-reflective process, which in turn, is aided by feedback from assessments.

While implementation of the spiral curriculum, with its focus on in-depth mastery and iterative revisiting would improve understanding, understanding is not enough to develop one of the primary goals of legal education: transfer of knowledge to solve novel problems.<sup>170</sup> Transfer of learning is the “process whereby learning that occurs in one context enhances or undermines related performance in another area.”<sup>171</sup> In law school, transfer requires learners to isolate concepts from abstract theory in doctrinal courses and concrete experiences in clinical settings to novel problems and new tasks in unfamiliar scenarios, both on academic exams and in practice scenarios. Students are more successful at transfer, or the ability to pick the right explanation and applying to the unique problem at hand, when they have become adept at “extracting the underlying principles or rules that differentiate types of problems.”<sup>172</sup> In order to successfully master transfer, students need to practice translating “formal legal problems” and “concrete rules and analogies from precedent and apply them to new legal problems.”<sup>173</sup> Professor Tanya Kowalski has proposed a Core Skills curriculum to help students see how concepts apply across doctrines.<sup>174</sup> Professor Kowalski’s Core Skills curriculum employs many of the concepts essential to the spiral curriculum; students create mental schema that can

---

[http://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/governancedocuments/2015\\_learning\\_outcomes\\_guidance.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/governancedocuments/2015_learning_outcomes_guidance.authcheckdam.pdf)  
[<https://perma.cc/9QEV-AR9P>].

168. See generally Carol Springer Sargent & Andrea A. Curcio, *Empirical Evidence that Formative Assessments Improve Final Exams*, 61 J. LEGAL EDUC. 379 (2012); see also Daniel Schwarcz & Dion Farganis, *The Impact of Individualized Feedback on Law Student Performance*, MINN. LEGAL STUD. RES. PAPER NO. 16-13 (2016), <http://ssrn.com/abstract=2772393> [<https://perma.cc/GU5M-M7MC>].

169. Kelly S. Terry, *Embedding Assessment Principles in Externships*, 20 CLINICAL L. REV. 467, 469 (2014).

170. See NAT’L RESEARCH COUNCIL, *supra* note 79, at 63.

171. Sandra Harris et al., *Extending Transfer of Learning Theory to Transformative Learning Theory: A Model for Promoting Teacher Leadership*, 47 LEARNING INTO PRACTICE 318, 319 (2008).

172. BROWN, *supra* note 103, at 4.

173. Tanya Kowalski, *True North: Navigating for the Transfer of Learning in Legal Education*, 34 SEATTLE U. L. REV. 51, 52 (2010).

174. *Id.* at 53.

be built into a broader cognitive template “[bridging] analytical skills from first-year legal writing to writing for clinic . . . and doctrinal knowledge from first-year Torts and Contracts to a tortious interference suit encountered five years later in practice.”<sup>175</sup> Students can be assisted in creating these broad cognitive templates by letting them see how doctrine relates to practice and how classroom learning relates to practice, beginning their 1L year. As students enrich their cognitive templates, iterative revisiting of doctrine allows students to deepen their knowledge and create broader cognitive templates, connecting more knowledge to practice skills.

Transfer of knowledge requires contextual understanding, provided by experiential and service learning. Successful implementation of the spiral curriculum requires contextual understanding of abstract knowledge. Law school is quite successful at providing students with abstract knowledge through doctrinal courses and the Socratic method,<sup>176</sup> but has not been as successful providing students with the experiential and service learning that would provide the contextual understanding necessary to transfer learning.<sup>177</sup>

*B. Experiential and Service Learning Across the Curriculum: Providing Context and Meaning to Legal Education*

The initial discussion on the adoption of the spiral curriculum in legal education has focused primarily on the benefits for students preparing to take the bar exam. However, the benefits of a spiral curriculum matched with embedded service learning, and later, clinical education, provide potential solutions to many of the criticisms facing legal education.<sup>178</sup> Embedded service learning, beginning at the commencement of the first year is an indispensable element of curricular improvement. Eduard C. Lindeman, one of the first adult learning theorists, explained the “chief purpose of [adult learning] is to discover the meaning of experience.”<sup>179</sup> However, current practice in legal education postpones learning through experience until the second, and sometimes the third, year, if at all.<sup>180</sup> Students must make sense of abstract knowledge without appropriate context or social meaning. As Professor Barbara Glesner Fines has noted, the “shadow pedagogy” of clinical or experiential learning contextualizes legal analysis and doctrine:

[Experiential education early in the curriculum] does not displace Socratic Method but is complementary. Just as the teaching of legal skills is of little effect when taught without substance and analytical rigor, so too the teaching of analytical skills

---

175. *Id.* at 55.

176. SULLIVAN ET AL., *supra* note 39, at 23.

177. Deborah Maranville, *Infusing Passion and Context into the Traditional Law Curriculum Through Experiential Learning*, 51 J. LEGAL EDUC. 51, 52 (2001).

178. *Id.* at 51.

179. KNOWLES ET AL., *supra* note 26, at 38.

180. Daniel M. Schaffzin, *So Why Not an Experiential Law School . . . Starting with Reflection in the First Year?*, 7 ELON L. REV. 383, 390 (2015) (“[F]aculties have reacted by offering . . . significant experiential enhancements to the upper-level curriculum. While a small number of schools have incorporated non-traditional, skills-focused courses in the first year, most have retained a traditional-looking first-year course diet consisting of well-entrenched foundational courses in legal doctrine (torts, contracts, criminal law, etc.) along with legal research and writing.”).

and knowledge is enhanced by placing analysis and doctrine in the context of real-world applications.<sup>181</sup>

There are many justifications for delaying experiential or service learning until later in the curriculum, most of the justifications rely on student readiness for legal work or the impossibility of fitting experiential learning into the already-packed first year of law school. These justifications fail to recognize that learning commences with students' experiences in the world; their prior knowledge is the "starting point and reference point" for learning.<sup>182</sup> Learning is impeded, if not prevented, when students do not have a "reference point" for a topic. This presents a challenge early in the law school curriculum, when emerging adult students are forced to grapple with utterly foreign topics. Very few twenty-three or twenty-four year olds have purchased a home, and therefore, the process of understanding the sale of real estate, usually a part of the first-year curriculum, has no context or reference point for these students.<sup>183</sup> A significant majority of these emerging adults have not attended a table closing or understand the purpose of escrow, have never seen an application for a mortgage, and did not have the pre-law opportunity to shadow an attorney or paralegal handling these matters. When these topics are encountered for the first time, these students have no context or reference point for learning. Students cannot build connections to prior learning, because they have no prior learning about these matters.<sup>184</sup>

Embedding service learning in the first semester gives students context and reference points for learning. Service learning is defined as:

a credit-bearing educational experience in which students participate in an organized service activity that meets identified community needs and reflect on the service activity in such a way as to gain further understanding of course content, a broader appreciation of the discipline, and an enhanced sense of civic responsibility.<sup>185</sup>

I choose the term service learning, as opposed to experiential or clinical learning, because students do not have the knowledge, skills, or judgment to participate as student-lawyers in their first-year of law school. Service learning is different from the experiential learning students should engage in later in their academic career because it is not skill-based in the context of their professional education. Service learning is meant to embed students in the community and a culture of service that is critical to the ethos of lawyering.<sup>186</sup> Students in their first year can provide services to incoming clients without acting in the role of student-attorney; their role in the first year should be to observe client interviews, shadow attorneys, and partake in limited basic tasks, such as assisting clients as they fill out intake forms.

---

181. Glesner Fines, *supra* note 150, at 160.

182. Grose, *supra* note 23, at 499.

183. When I polled my students in Property during the spring 2016 semester, half (twenty-three) of the forty-seven students had never purchased a home or applied for a mortgage and had never attended a closing. While this is only anecdotal, twelve years of law school teaching at four different law schools and four years of teaching Property give me confidence in the applicability of the anecdote.

184. See NAT'L RESEARCH COUNCIL, *supra* note 79, at 53.

185. *Id.*

186. *Id.*

Service learning works best when students can connect what they are doing in their service placement to related “course material through reflection activities such as directed writings, small group discussions, and class presentations.”<sup>187</sup> This experience provides students with the context to understand their doctrinal learning, in what clinician Phyllis Goldfarb described as the “practice-theory spiral.”<sup>188</sup> Students reflect on the issues they see in their service learning experiences, apply them to their doctrinal learning, then reflect on the process of lawyering.<sup>189</sup> Service learning provides context to doctrinal learning that engages students and helps them situate the heavily-edited, frequently dry cases in relation to real people, problems, and emotions that are critical to the lawyering process and to effective learning.<sup>190</sup> Learning becomes “stronger when it matters, when the abstract is made concrete and personal.”<sup>191</sup> By allowing students to interact with clients, even outside of meaningful legal representation, the abstract knowledge from doctrinal courses can become concrete and personal; they are seeing how the law affects people in their day-to-day life when they observe a lawyer questioning a client about an issue they read about in class.

Service or experiential learning also represents a series of tests for the learner; when faced with the authentic, ill-defined problems of a client, students are forced to recall their prior learning and apply it.<sup>192</sup> Service learning is ideal for this type of testing because students learn that problems in law rarely have one correct answer, but usually have many incorrect answers. By talking through the problem and working through potential solutions, students need to recall what they have learned, and apply it to a new, novel problem. Students do not need to be engaged in actual lawyering for this process to assist doctrinal learning.

Testing in service learning presents another kind of positive stress on the student, one separate from the negative stress presented by traditional testing: the student feels they *must learn* in order to avoid embarrassment in front of clients.<sup>193</sup> This pressure to be knowledgeable and helpful to clients—to test their learning in context—gives their doctrinal learning intrinsic meaning.

A critical element in the success of experiential learning, from service learning in the first year to focused specialization in the third year, is self-reflection. The purpose of self-reflection is both practical and theoretical; if students are to become thoughtful problem solvers as practicing attorneys, they need to be able to critically examine their experiences and learn from their successes as well as their failures. Theoretically, self-reflection is a critical element of the curricular process, but it also feeds practical needs. Although self-reflection is an attribute of adult learning that may be natural for some entering students,<sup>194</sup> even the least maturationally developed

---

187. *Id.*

188. Grose, *supra* note 23, at 497.

189. *Id.* at 500-01.

190. Maranville, *supra* note 177, at 51-52.

191. Brown, *supra* note 103, at 11.

192. *Id.* at 12.

193. Bloch, *supra* note 75, at 343-44.

194. Morton, *supra* note 73, at 489.



law students need to grow into self-reflective practitioners willing to thoughtfully consider the legal, moral, and ethical dilemmas that confront all attorneys.<sup>195</sup> As a part of the educational process, self-reflection “can involve several cognitive activities that lead to stronger learning: retrieving knowledge and earlier training from memory, connecting these to new experiences, and visualizing and mentally rehearsing what you might do differently the next time.”<sup>196</sup>

It is essential that self-reflection becomes a part of the learning process from the first year. During the first year of law school, students learn, often through what can be called the “shadow curriculum,”<sup>197</sup> what is valued in the profession and what is considered extraneous. But moving self-reflection from its place solely within the second or third-year experiential learning process to a central place within the doctrinal and experiential program, law students learn that self-reflection is an essential part of lawyering, as fundamental to their professional career as strong, clear writing, close reading, and detailed analysis. As clinical professors can attest, self-reflection cannot be left to experiential programs in the second and third year, when students would prefer not to work on any out-of-class assignments. Upper level students believe the purpose of participation in experiential programs is “on-the-job training and survival”—not long-term professional development.<sup>198</sup>

Despite the voluminous research on the importance of self-reflection, it plays very little, if any, part in the doctrinal curriculum at most law schools. Until students reach clinic or externship opportunities, few students are asked to think critically and personally about how they experience the law as students. The lack of self-reflection feeds into one of the more pernicious and overlooked problems in law school: student distress in the form of depression, anxiety, and substance abuse. While the first year has traditionally been solely focused on developing the intellectual and cognitive skills critical to being a lawyer, it is also associated with a disturbing change in social-emotional well-being and health.<sup>199</sup> The most prolific and well-known scholars in this area are law professor Larry Krieger and psychologist Kennon Sheldon. Krieger and Sheldon’s work has proven the decline in mental health and well-being associated with the first year of law school, a decline that continues throughout law school.<sup>200</sup> Studies have shown that law students come to law school with the same psychological health profile as the general population;<sup>201</sup> however,

---

195. ALL. FOR EXPERIENTIAL LEARNING IN LAW, *Experience the Future: Papers from the Second National Symposium on Experiential Education in Law*, 7 ELON L. REV. 1, 5 (2015).

196. Brown, *supra* note 103, at 27.

197. See SULLIVAN ET AL., *supra* note 39, at 7.

198. Morton, *supra* note 73, at 489.

199. See Kennon M. Sheldon & Lawrence S. Krieger, *Understanding the Negative Effects of Legal Education on Law Students: A Longitudinal Test and Extension of Self-Determination Theory*, PERS. & SOC. PSYCHOL. BULL. 3, 4 (2008), [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=913824](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=913824) [https://perma.cc/SV7B-A68S].

200. *Id.*; see also Nancy J. Soonpaa, *Stress in Law Students: A Comparative Study of First-Year, Second-Year, and Third-Year Students*, 36 CONN. L. REV. 353, 377-78 (2004).

201. Todd David Peterson & Elizabeth Waters Peterson, *Stemming the Tide of Law Student Depression: What Law Schools Need to Learn from the Science of Positive Psychology*, 9 YALE J. HEALTH POL’Y L. & ETHICS 357, 359 (2009).

after the first year, 44% report psychological distress in the form of depression, anxiety, obsessive thoughts, and alcohol or substance abuse.<sup>202</sup>

Despite significant empirical research documenting law student distress, there is no single source of it;<sup>203</sup> it is likely that law student distress is caused by many parts of the current law school curriculum.<sup>204</sup> Smaller doctrinal classes, along with service learning in the first year, and additional experiential learning opportunities during years two and three are likely to decrease student distress for several reasons. During the first year of law school, students show a decrease in intrinsic motivation, or engagement and behavior driven by interest and enjoyment potential.<sup>205</sup> This shift towards extrinsic, or appearance-driven motivation, and away from intrinsic “community and helping values,” parallels the decline in student well-being and increase in student distress.<sup>206</sup>

It is important to note that changes to the curriculum to decrease student, and potentially professional, distress among lawyers has been suggested in the past and has been met with criticism.<sup>207</sup> Adding service learning to the first year and constructing smaller first-year classes has been criticized as “pedagogically unsound, even if psychologically less stressful.”<sup>208</sup> Despite the claim that changes to the curriculum could be “pedagogically unsound,” critics have failed to specify how these changes would harm legal education or acknowledge any benefits to restructuring the curriculum. In response to critics, educators such as David M. Moss of the University of Connecticut Neag School of Education have noted that the balance of “academic rigor and excellence with practical training . . . require[s] a comprehensive curricular approach” that is true for schools of medicine, business, education, and law.<sup>209</sup>

### *C. Reinvigorating Upper Division Legal Education: Integration, Specialization, and Professional Readiness*

While critics find the least to criticize about the first year of law school, the third year of law school is unequivocally the most criticized and derided.<sup>210</sup> Even President Obama, while addressing students at the State University at Binghamton

---

202. *Id.*

203. *See id.* at 360.

204. *See* Sheldon & Krieger, *supra* note 199, at 4.

205. *Id.*

206. Kennon M. Sheldon & Lawrence S. Krieger, *Does Legal Education have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being*, 22 BEHAV. SCI. & L. 261, 264 (2004).

207. Peterson & Peterson, *supra* note 201, at 361.

208. *Id.*

209. David M. Moss, *Tethered to Tradition: Towards an Innovative Model for Legal Education*, 17 CHAPMAN L. REV. 1, 6 (2013).

210. *See* Steven Craig Paschang, *On Matters Pedagogic—Creating a “Practical” Law School Curriculum*, J. KAN. B. ASS’N 15, 15 (2010); *see also* R. Michael Cassidy, *Reforming the Law School Curriculum from the Top Down*, 64 J. LEGAL EDUC. 428, 32 (2015); Mitu Gulati et al., *The Happy Charade: An Empirical Examination of the Third Year of Law School*, 51 J. LEGAL EDUC. 235 (2001); James E. Moliterno, *Long-Overdue Medicine for What Ails Law School*, LITIGATION 54, 54 (2014).

in 2013, commented that doctrinal teaching in law school should be limited two years and law students should use the third year “clerking or practicing in a firm.”<sup>211</sup> Many scholars have commented on the third year of law school, with most suggesting that the third year would best serve the needs of students by better preparing them to enter the profession. While the proposals vary in modest ways, many are shaped by the medical residency model, suggesting law students should spend their last year of law school in specialized training for practice. Interesting proposals abound, but the only law school to fully implement a third-year practice curriculum is Washington and Lee University School of Law.<sup>212</sup> The Washington and Lee model is only one potential model for a redesigned third year; suggestions by James Moliterno also look at the economic model of the legal profession and re-envision the third year to better meet the needs of students and their future employers.<sup>213</sup> Critically, re-envisioning the third year of law school requires a focus on the learning needs of developing professionals as well as readiness for practice in an evolving profession; law schools need to break out of the mindset that law is exclusively graduate education and embrace the economic reality that it is professional education, designed for the intellectual growth and enrichment of students while simultaneously providing the practical foundation for entry into the profession.

The idea of specialization in professional education is well-established: medical students participate in at least two years of clinical rounds to prepare for choosing a residency specialty.<sup>214</sup> Although many law schools offer concentrations that lead to certificates at graduation, law schools have not yet embraced a model of education that encourages specialization paired with intensive practical experience.<sup>215</sup> In the past, it has been reasoned that law students do not have the ability to choose a specialty; their first (or second) employer will often determine their area of expertise and provide the training.<sup>216</sup>

However, the changing economics of legal profession since the Great Recession have led to profound changes in the way lawyers are trained.<sup>217</sup> Large firms no longer want to invest in the professional training of first and second-year associates

---

211. Peter Lattmann, *Obama Says Law School Should Be Two, Not Three, Years*, N.Y. TIMES (Aug. 23, 2013), [http://dealbook.nytimes.com/2013/08/23/obama-says-law-school-should-be-two-years-not-three/?\\_r=0](http://dealbook.nytimes.com/2013/08/23/obama-says-law-school-should-be-two-years-not-three/?_r=0) [https://perma.cc/LX8S-5U84].

212. Sheldon Krantz & Michael Millemann, *Legal Education in Transition: Trends and Their Implications*, 94 NEB. L. REV. 1, 32 (2015).

213. James E. Moliterno, *A Way Forward for an Ailing Legal Education Model*, 17 CHAP. L. REV. 73, 75-76 (2013).

214. Dan J. Tennenhouse, *Physician Training and Specialization*, 1 ATTORNEYS MED. DESKBOOK § 7:1 (2015).

215. Michael A. Olivas, *58,000 Minutes: An Essay on Law Majors and Emerging Proposals for the Third Year of Law Study*, 45 MCGEORGE L. REV. 115, 119 (2013).

216. Ray Worthy Campbell, *The End of Law Schools: Legal Education in the Era of Legal Service Businesses*, 85 MISS. L.J. 1, 44 (2016) (“Even if the [specialized] training were somehow complete, there can be no guarantee that graduates of the program of study could find jobs related to their training.”).

217. Donald J. Polden, *Leading Institutional Change: Law Schools and Legal Education in a Time of Crisis*, 83 TENN. L. REV. 949, 978 (2016).

because clients will no longer subsidize first and second-year work-as-training.<sup>218</sup> This shift pushes practical training back on law schools, which have not been prepared to take over this role.<sup>219</sup> Growth in overseas and rural piecemeal legal work challenges the traditional big-law document review training that many law professors experienced immediately after graduating from law school.<sup>220</sup> These changes to the legal profession are unlikely to be the last changes to an evolving profession. It has been noted that across professions and business, “[w]e now live in a global economy characterized by rapid change, accelerating scientific and technological breakthroughs, and an unprecedented level of competitiveness,” and these patterns will impact law for the foreseeable future.<sup>221</sup> Legal education needs to evolve with the profession, without sacrificing intellectual growth and enrichment or the process of developing into a professional.

Therefore, the most compelling proposals for a reformed third year are both flexible and able to respond to the changing needs of economic circumstances of law schools and law students. The world is in constant motion, and law is no different. The third year of legal education needs to reflect the reality that a third-year program that “makes sense today might not make sense tomorrow” for an evolving profession.<sup>222</sup> Law schools need to become, in the words of Kegan and Laskow Lahey, “self-transforming” entities.<sup>223</sup> Self-transforming entities look at the design of a program and consider change within that current program, as well as change that will transform the design of the program in light of new information. For law schools to become self-transforming entities, they need to step outside their own ideology to see the “limitations or defects” in the current program and take a more comprehensive view of the profession as well as of the program of legal education that prepares students to become novice professionals.<sup>224</sup>

The requirement that law schools constantly reevaluate their program in light of new information means that the fantasy of reimagining legal education proposed at the start of the paper should not be the model for legal education in perpetuity. The self-transforming model of legal education will be a model of constant re-invention in order to meet the needs of a changing workforce and respond to the changing needs of clients. Most of the reinvention required to evolve with the economy and client needs will occur in the third year of law school, during the apprenticeship of identity and purpose, when students are transitioning to professional life.<sup>225</sup> This

---

218. Robert J. Condlin, “Practice Ready Graduates”: A Millennialist Fantasy, 31 *TOURO L. REV.* 75, 95 (2014).

219. Dilloff, *supra* note 13, at 346 (“The tensions between law firm economics and nonbillable training present law schools with the opportunity to become much needed training hubs.”).

220. Bernard A. Burk, *What's New About the New Normal: The Evolving Market for New Lawyers in the 21st Century*, 41 *FLA. ST. U. L. REV.* 541, 585 (2014); *see also* Heather Timmons, *Outsourcing to India Draws Western Lawyers*, *N.Y. TIMES* (Aug. 4, 2010), <https://nyti.ms/2jDBJyr> [<https://perma.cc/6996-XRYC>].

221. KEGAN & LASKOW LAHEY, *supra* note 36, at 25.

222. *Id.* at 19-20.

223. *Id.* at 19.

224. *Id.* at 26.

225. *See* SULLIVAN ET AL., *supra* note 39, at 28.

apprenticeship should evolve with the needs of the profession. Along with changes to the third-year program, the first and second-year apprenticeships, and their relationship with service and experiential education, should change to bridge the gap between thinking about law and practicing law.

To become dynamic institutions, law schools need to identify the obstacles to change. Law schools face adaptive challenges, not technical or skill challenges.<sup>226</sup>

## V. CONCLUSION

Broad, sweeping law school reform requires more than a fantasy and a plan. Reform that re-envisioning legal education and revitalizes the academy will require changes that are not grappled with in this article: changes in leadership, changes in hiring teaching faculty, and critically, it will require breaking out of established ways of thinking about teaching, learning, and preparing novices for the profession. It has been proposed that law schools use systems thinking, or design thinking, to reevaluate the curriculum. Systems thinking, or the linkages and interactions between components that comprise a system, is a helpful place to begin the process of evaluating change in law schools.

---

226. KEGAN & LASKOW LAHEY, *supra* note 36, at 29.